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HOUSE BILL 834

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Al Park

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; REVISING ARTICLES 1, 7 AND  
9 OF THE UNIFORM COMMERCIAL CODE; AMENDING, REPEALING AND  
ENACTING CERTAIN SECTIONS OF THE NMSA 1978 TO ACCOMPLISH THE  
ADDITIONS TO, DELETIONS FROM AND CLARIFICATIONS OF THE UNIFORM  
COMMERCIAL CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 55-1-101 NMSA 1978 (being Laws 1961,  
Chapter 96, Section 1-101, as amended) is amended to read:

"55-1-101. SHORT ~~[TITLE]~~ TITLES.--

(a) Chapter 55 NMSA 1978 shall be known and may be  
cited as the "Uniform Commercial Code"; and

(b) Chapter 55, Article 1 NMSA 1978 shall be known  
and may be cited as the "Uniform Commercial Code-General  
Provisions."

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1           Section 2. Section 55-1-102 NMSA 1978 (being Laws 1961,  
2 Chapter 96, Section 1-102) is repealed and a new Section  
3 55-1-102 NMSA 1978 is enacted to read:

4           "55-1-102. [NEW MATERIAL] SCOPE OF ARTICLE.--Chapter 55,  
5 Article 1 NMSA 1978 applies to a transaction to the extent that  
6 it is governed by another article of the Uniform Commercial  
7 Code."

8           Section 3. Section 55-1-103 NMSA 1978 (being Laws 1961,  
9 Chapter 96, Section 1-103) is repealed and a new Section  
10 55-1-103 NMSA 1978 is enacted to read:

11           "55-1-103. [NEW MATERIAL] CONSTRUCTION OF UNIFORM  
12 COMMERCIAL CODE TO PROMOTE ITS PURPOSES AND POLICIES--  
13 APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.--

14           (a) The Uniform Commercial Code must be liberally  
15 construed and applied to promote its underlying purposes and  
16 policies, which are:

17                   (1) to simplify, clarify and modernize the law  
18 governing commercial transactions;

19                   (2) to permit the continued expansion of  
20 commercial practices through custom, usage and agreement of the  
21 parties; and

22                   (3) to make uniform the law among the various  
23 jurisdictions.

24           (b) Unless displaced by the particular provisions  
25 of the Uniform Commercial Code, the principles of law and

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1 equity, including the law merchant and the law relative to  
2 capacity to contract, principal and agent, estoppel, fraud,  
3 misrepresentation, duress, coercion, mistake, bankruptcy and  
4 other validating or invalidating cause, supplement its  
5 provisions."

6 Section 4. Section 55-1-104 NMSA 1978 (being Laws 1961,  
7 Chapter 96, Section 1-104) is amended to read:

8 "55-1-104. CONSTRUCTION AGAINST IMPLICIT REPEAL.--~~[This~~  
9 ~~Act]~~ The Uniform Commercial Code being a general act intended  
10 as a unified coverage of its subject matter, no part of it  
11 shall be deemed to be impliedly repealed by subsequent  
12 legislation if such construction can reasonably be avoided."

13 Section 5. Section 55-1-105 NMSA 1978 (being Laws 1961,  
14 Chapter 96, Section 1-105, as amended) is repealed and a new  
15 Section 55-1-105 NMSA 1978 is enacted to read:

16 "55-1-105. [NEW MATERIAL] SEVERABILITY.--If any provision  
17 or clause of the Uniform Commercial Code or its application to  
18 any person or circumstance is held invalid, the invalidity does  
19 not affect other provisions or applications of the Uniform  
20 Commercial Code which can be given effect without the invalid  
21 provision or application, and to this end the provisions of the  
22 Uniform Commercial Code are severable."

23 Section 6. Section 55-1-106 NMSA 1978 (being Laws 1961,  
24 Chapter 96, Section 1-106) is repealed and a new Section  
25 55-1-106 NMSA 1978 is enacted to read:

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1 "55-1-106. [NEW MATERIAL] USE OF SINGULAR AND PLURAL--  
2 GENDER.--In the Uniform Commercial Code, unless the statutory  
3 context otherwise requires:

4 (1) words in the singular number include the  
5 plural, and those in the plural include the singular; and

6 (2) words of any gender also refer to any other  
7 gender."

8 Section 7. Section 55-1-107 NMSA 1978 (being Laws 1961,  
9 Chapter 96, Section 1-107) is repealed and a new Section  
10 55-1-107 NMSA 1978 is enacted to read:

11 "55-1-107. [NEW MATERIAL] SECTION CAPTIONS.--Section  
12 captions are part of the Uniform Commercial Code."

13 Section 8. Section 55-1-108 NMSA 1978 (being Laws 1961,  
14 Chapter 96, Section 1-108) is repealed and a new Section  
15 55-1-108 NMSA 1978 is enacted to read:

16 "55-1-108. [NEW MATERIAL] RELATION TO ELECTRONIC  
17 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--Chapter 55,  
18 Article 1 NMSA 1978 modifies, limits and supersedes the federal  
19 Electronic Signatures in Global and National Commerce Act, 15  
20 U.S.C. Section 7001 *et seq.*, except that nothing in this  
21 article modifies, limits or supersedes Section 7001(c) of that  
22 act or authorizes electronic delivery of any of the notices  
23 described in Section 7003(b) of that act."

24 Section 9. Section 55-1-201 NMSA 1978 (being Laws 1961,  
25 Chapter 96, Section 1-201, as amended) is repealed and a new

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1 Section 55-1-201 NMSA 1978 is enacted to read:

2 "55-1-201. [NEW MATERIAL] GENERAL DEFINITIONS.--

3 (a) Unless the context otherwise requires, words or  
4 phrases defined in this section, or in the additional  
5 definitions contained in other articles of the Uniform  
6 Commercial Code that apply to particular articles or parts  
7 thereof, have the meanings stated.

8 (b) Subject to definitions contained in other  
9 articles of the Uniform Commercial Code that apply to  
10 particular articles or parts thereof:

11 (1) "action", in the sense of a judicial  
12 proceeding, includes recoupment, counterclaim, set-off, suit in  
13 equity and any other proceeding in which rights are determined;

14 (2) "aggrieved party" means a party entitled  
15 to pursue a remedy;

16 (3) "agreement", as distinguished from  
17 "contract", means the bargain of the parties in fact, as found  
18 in their language or inferred from other circumstances,  
19 including course of performance, course of dealing or usage of  
20 trade as provided in Section 55-1-303 NMSA 1978;

21 (4) "bank" means a person engaged in the  
22 business of banking and includes a savings bank, savings and  
23 loan association, credit union and trust company;

24 (5) "bearer" means a person in control of a  
25 negotiable electronic document of title or a person in

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1 possession of a negotiable instrument, negotiable tangible  
2 document of title or certificated security that is payable to  
3 bearer or indorsed in blank;

4 (6) "bill of lading" means a document of title  
5 evidencing the receipt of goods for shipment issued by a person  
6 engaged in the business of directly or indirectly transporting  
7 or forwarding goods. The term does not include a warehouse  
8 receipt;

9 (7) "branch" includes a separately  
10 incorporated foreign branch of a bank;

11 (8) "burden of establishing" a fact means the  
12 burden of persuading the trier of fact that the existence of  
13 the fact is more probable than its nonexistence;

14 (9) "buyer in ordinary course of business"  
15 means a person that buys goods in good faith, without knowledge  
16 that the sale violates the rights of another person in the  
17 goods, and in the ordinary course from a person, other than a  
18 pawnbroker, in the business of selling goods of that kind. A  
19 person buys goods in the ordinary course if the sale to the  
20 person comports with the usual or customary practices in the  
21 kind of business in which the seller is engaged or with the  
22 seller's own usual or customary practices. A person that sells  
23 oil, gas or other minerals at the wellhead or minehead is a  
24 person in the business of selling goods of that kind. A buyer  
25 in ordinary course of business may buy for cash, by exchange of

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1 other property or on secured or unsecured credit and may  
2 acquire goods or documents of title under a preexisting  
3 contract for sale. Only a buyer that takes possession of the  
4 goods or has a right to recover the goods from the seller under  
5 Chapter 55, Article 2 NMSA 1978 may be a buyer in ordinary  
6 course of business. "Buyer in ordinary course of business"  
7 does not include a person that acquires goods in a transfer in  
8 bulk or as security for or in total or partial satisfaction of  
9 a money debt;

10 (10) "conspicuous", with reference to a term,  
11 means so written, displayed or presented that a reasonable  
12 person against which it is to operate ought to have noticed it.  
13 Whether a term is "conspicuous" or not is a decision for the  
14 court. Conspicuous terms include the following:

15 (A) a heading in capitals equal to or  
16 greater in size than the surrounding text or in contrasting  
17 type, font or color to the surrounding text of the same or  
18 lesser size; and

19 (B) language in the body of a record or  
20 display in larger type than the surrounding text or in  
21 contrasting type, font or color to the surrounding text of the  
22 same size or set off from surrounding text of the same size by  
23 symbols or other marks that call attention to the language;

24 (11) "consumer" means an individual who enters  
25 into a transaction primarily for personal, family or household

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1 purposes;

2 (12) "contract", as distinguished from  
3 "agreement", means the total legal obligation that results from  
4 the parties' agreement as determined by the Uniform Commercial  
5 Code as supplemented by any other applicable laws;

6 (13) "creditor" includes a general creditor, a  
7 secured creditor, a lien creditor and any representative of  
8 creditors, including an assignee for the benefit of creditors,  
9 a trustee in bankruptcy, a receiver in equity and an executor  
10 or administrator of an insolvent debtor's or assignor's estate;

11 (14) "defendant" includes a person in the  
12 position of defendant in a counterclaim, cross-claim or third-  
13 party claim;

14 (15) "delivery", with respect to an electronic  
15 document of title, means voluntary transfer of control, and  
16 with respect to an instrument, a tangible document of title or  
17 chattel paper, means voluntary transfer of possession;

18 (16) "document of title" means a record: (i)  
19 that in the regular course of business or financing is treated  
20 as adequately evidencing that the person in possession or  
21 control of the record is entitled to receive, control, hold and  
22 dispose of the record and the goods the record covers; and (ii)  
23 that purports to be issued by or addressed to a bailee and to  
24 cover goods in the bailee's possession that are either  
25 identified or are fungible portions of an identified mass. The

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1 term includes a bill of lading, transport document, dock  
2 warrant, dock receipt, warehouse receipt and order for delivery  
3 of goods. An electronic document of title means a document of  
4 title evidenced by a record consisting of information stored in  
5 an electronic medium. A tangible document of title means a  
6 document of title evidenced by a record consisting of  
7 information that is inscribed on a tangible medium;

8 (17) "fault" means a default, breach or  
9 wrongful act or omission;

10 (18) "fungible goods" means:

11 (A) goods of which any unit, by nature  
12 or usage of trade, is the equivalent of any other like unit; or

13 (B) goods that by agreement are treated  
14 as equivalent;

15 (19) "genuine" means free of forgery or  
16 counterfeiting;

17 (20) "good faith", except as otherwise  
18 provided in Chapter 55, Article 5 NMSA 1978, means honesty in  
19 fact and the observance of reasonable commercial standards of  
20 fair dealing;

21 (21) "holder" means:

22 (A) the person in possession of a  
23 negotiable instrument that is payable either to bearer or to an  
24 identified person that is the person in possession;

25 (B) the person in possession of a

1 negotiable tangible document of title if the goods are  
2 deliverable either to bearer or to the order of the person in  
3 possession; or

4 (C) the person in control of a  
5 negotiable electronic document of title;

6 (22) "insolvency proceeding" includes an  
7 assignment for the benefit of creditors or other proceeding  
8 intended to liquidate or rehabilitate the estate of the person  
9 involved;

10 (23) "insolvent" means:

11 (A) having generally ceased to pay debts  
12 in the ordinary course of business other than as a result of  
13 bona fide dispute;

14 (B) being unable to pay debts as they  
15 become due; or

16 (C) being insolvent within the meaning  
17 of federal bankruptcy law;

18 (24) "money" means a medium of exchange  
19 currently authorized or adopted by a domestic or foreign  
20 government. The term includes a monetary unit of account  
21 established by an intergovernmental organization or by  
22 agreement between two or more countries;

23 (25) "organization" means a person other than  
24 an individual;

25 (26) "party", as distinguished from "third

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1 party", means a person that has engaged in a transaction or  
2 made an agreement subject to the Uniform Commercial Code;

3 (27) "person" means an individual,  
4 corporation, business trust, estate, trust, partnership,  
5 limited liability company, association, joint venture,  
6 government, governmental subdivision, agency or  
7 instrumentality; public corporation; or any other legal or  
8 commercial entity;

9 (28) "present value" means the amount as of a  
10 date certain of one or more sums payable in the future,  
11 discounted to the date certain by use of either an interest  
12 rate specified by the parties if that rate is not manifestly  
13 unreasonable at the time the transaction is entered into or, if  
14 an interest rate is not so specified, a commercially reasonable  
15 rate that takes into account the facts and circumstances at the  
16 time the transaction is entered into;

17 (29) "purchase" means taking by sale, lease,  
18 discount, negotiation, mortgage, pledge, lien, security  
19 interest, issue or reissue, gift or any other voluntary  
20 transaction creating an interest in property;

21 (30) "purchaser" means a person that takes by  
22 purchase;

23 (31) "record" means information that is  
24 inscribed on a tangible medium or that is stored in an  
25 electronic or other medium and is retrievable in perceivable

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1 form;

2 (32) "remedy" means any remedial right to  
3 which an aggrieved party is entitled with or without resort to  
4 a tribunal;

5 (33) "representative" means a person empowered  
6 to act for another, including an agent, an officer of a  
7 corporation or association and a trustee, executor or  
8 administrator of an estate;

9 (34) "right" includes remedy;

10 (35) "security interest" means an interest in  
11 personal property or fixtures that secures payment or  
12 performance of an obligation. "Security interest" includes any  
13 interest of a consignor and a buyer of accounts, chattel paper,  
14 a payment intangible or a promissory note in a transaction that  
15 is subject to Chapter 55, Article 9 NMSA 1978. "Security  
16 interest" does not include the special property interest of a  
17 buyer of goods on identification of those goods to a contract  
18 for sale under Section 55-2-401 NMSA 1978, but a buyer may also  
19 acquire a "security interest" by complying with Chapter 55,  
20 Article 9 NMSA 1978. Except as otherwise provided in Section  
21 55-2-505 NMSA 1978, the right of a seller or lessor of goods  
22 under Chapter 55, Article 2 or 2A NMSA 1978 to retain or  
23 acquire possession of the goods is not a "security interest",  
24 but a seller or lessor may also acquire a "security interest"  
25 by complying with Chapter 55, Article 9 NMSA 1978. The

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1 retention or reservation of title by a seller of goods  
2 notwithstanding shipment or delivery to the buyer under Section  
3 55-2-401 NMSA 1978 is limited in effect to a reservation of a  
4 "security interest". Whether a transaction in the form of a  
5 lease creates a "security interest" is determined pursuant to  
6 Section 55-1-203 NMSA 1978;

7 (36) "send" in connection with a writing,  
8 record or notice means:

9 (A) to deposit in the mail or deliver  
10 for transmission by any other usual means of communication with  
11 postage or cost of transmission provided for and properly  
12 addressed and, in the case of an instrument, to an address  
13 specified thereon or otherwise agreed, or if there be none to  
14 any address reasonable under the circumstances; or

15 (B) in any other way to cause to be  
16 received any record or notice within the time it would have  
17 arrived if properly sent;

18 (37) "signed" includes using any symbol  
19 executed or adopted with present intention to adopt or accept a  
20 writing;

21 (38) "state" means a state of the United  
22 States, the District of Columbia, Puerto Rico, the United  
23 States Virgin Islands or any territory or insular possession  
24 subject to the jurisdiction of the United States;

25 (39) "surety" includes a guarantor or other

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1 secondary obligor;

2 (40) "term" means a portion of an agreement  
3 that relates to a particular matter;

4 (41) "unauthorized signature" means a  
5 signature made without actual, implied or apparent authority.  
6 The term includes a forgery;

7 (42) "warehouse receipt" means a document of  
8 title issued by a person engaged in the business of storing  
9 goods for hire; and

10 (43) "writing" includes printing, typewriting  
11 or any other intentional reduction to tangible form. "Written"  
12 has a corresponding meaning."

13 Section 10. Section 55-1-202 NMSA 1978 (being Laws 1961,  
14 Chapter 96, Section 1-202) is repealed and a new Section  
15 55-1-202 NMSA 1978 is enacted to read:

16 "55-1-202. [NEW MATERIAL] NOTICE--KNOWLEDGE.--

17 (a) Subject to Subsection (f) of this section, a  
18 person has "notice" of a fact if the person:

19 (1) has actual knowledge of it;

20 (2) has received a notice or notification of  
21 it; or

22 (3) from all the facts and circumstances known  
23 to the person at the time in question, has reason to know that  
24 it exists.

25 (b) "Knowledge" means actual knowledge. "Knows"

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1 has a corresponding meaning.

2 (c) "Discover", "learn" or words of similar import  
3 refer to knowledge rather than to reason to know.

4 (d) A person "notifies" or "gives" a notice or  
5 notification to another person by taking such steps as may be  
6 reasonably required to inform the other person in ordinary  
7 course, whether or not the other person actually comes to know  
8 of it.

9 (e) Subject to Subsection (f) of this section, a  
10 person "receives" a notice or notification when:

11 (1) it comes to that person's attention; or

12 (2) it is duly delivered in a form reasonable  
13 under the circumstances at the place of business through which  
14 the contract was made or at another location held out by that  
15 person as the place for receipt of such communications.

16 (f) Notice, knowledge or a notice or notification  
17 received by an organization is effective for a particular  
18 transaction from the time it is brought to the attention of the  
19 individual conducting that transaction and, in any event, from  
20 the time it would have been brought to the individual's  
21 attention if the organization had exercised due diligence. An  
22 organization exercises due diligence if it maintains reasonable  
23 routines for communicating significant information to the  
24 person conducting the transaction and there is reasonable  
25 compliance with the routines. Due diligence does not require

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1 an individual acting for the organization to communicate  
2 information unless the communication is part of the  
3 individual's regular duties or the individual has reason to  
4 know of the transaction and that the transaction would be  
5 materially affected by the information."

6 Section 11. Section 55-1-203 NMSA 1978 (being Laws 1961,  
7 Chapter 96, Section 1-203) is repealed and a new Section  
8 55-1-203 NMSA 1978 is enacted to read:

9 "55-1-203. [NEW MATERIAL] LEASE DISTINGUISHED FROM  
10 SECURITY INTEREST.--

11 (a) Whether a transaction in the form of a lease  
12 creates a lease or security interest is determined by the facts  
13 of each case.

14 (b) A transaction in the form of a lease creates a  
15 security interest if the consideration that the lessee is to  
16 pay the lessor for the right to possession and use of the goods  
17 is an obligation for the term of the lease and is not subject  
18 to termination by the lessee, and:

19 (1) the original term of the lease is equal to  
20 or greater than the remaining economic life of the goods;

21 (2) the lessee is bound to renew the lease for  
22 the remaining economic life of the goods or is bound to become  
23 the owner of the goods;

24 (3) the lessee has an option to renew the  
25 lease for the remaining economic life of the goods for no

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1 additional consideration or for nominal additional  
2 consideration upon compliance with the lease agreement; or

3 (4) the lessee has an option to become the  
4 owner of the goods for no additional consideration or for  
5 nominal additional consideration upon compliance with the lease  
6 agreement.

7 (c) A transaction in the form of a lease does not  
8 create a security interest merely because:

9 (1) the present value of the consideration the  
10 lessee is obligated to pay the lessor for the right to  
11 possession and use of the goods is substantially equal to or is  
12 greater than the fair market value of the goods at the time the  
13 lease is entered into;

14 (2) the lessee assumes risk of loss of the  
15 goods;

16 (3) the lessee agrees to pay, with respect to  
17 the goods, taxes, insurance, filing, recording or registration  
18 fees, or service or maintenance costs;

19 (4) the lessee has an option to renew the  
20 lease or to become the owner of the goods;

21 (5) the lessee has an option to renew the  
22 lease for a fixed rent that is equal to or greater than the  
23 reasonably predictable fair market rent for the use of the  
24 goods for the term of the renewal at the time the option is to  
25 be performed; or

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1 (6) the lessee has an option to become the  
2 owner of the goods for a fixed price that is equal to or  
3 greater than the reasonably predictable fair market value of  
4 the goods at the time the option is to be performed.

5 (d) Additional consideration is nominal if it is  
6 less than the lessee's reasonably predictable cost of  
7 performing under the lease agreement if the option is not  
8 exercised. Additional consideration is not nominal if:

9 (1) when the option to renew the lease is  
10 granted to the lessee, the rent is stated to be the fair market  
11 rent for the use of the goods for the term of the renewal  
12 determined at the time the option is to be performed; or

13 (2) when the option to become the owner of the  
14 goods is granted to the lessee, the price is stated to be the  
15 fair market value of the goods determined at the time the  
16 option is to be performed.

17 (e) The "remaining economic life of the goods" and  
18 "reasonably predictable" fair market rent, fair market value or  
19 cost of performing under the lease agreement must be determined  
20 with reference to the facts and circumstances at the time the  
21 transaction is entered into."

22 Section 12. Section 55-1-204 NMSA 1978 (being Laws 1961,  
23 Chapter 96, Section 1-204) is repealed and a new Section  
24 55-1-204 NMSA 1978 is enacted to read:

25 "55-1-204. [NEW MATERIAL] VALUE.--Except as otherwise

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1 provided in Chapter 55, Articles 3, 4 and 5, a person gives  
2 value for rights if the person acquires them:

3 (1) in return for a binding commitment to extend  
4 credit or for the extension of immediately available credit,  
5 whether or not drawn upon and whether or not a charge-back is  
6 provided for in the event of difficulties in collection;

7 (2) as security for, or in total or partial  
8 satisfaction of, a preexisting claim;

9 (3) by accepting delivery under a preexisting  
10 contract for purchase; or

11 (4) in return for any consideration sufficient to  
12 support a simple contract."

13 Section 13. Section 55-1-205 NMSA 1978 (being Laws 1961,  
14 Chapter 96, Section 1-205) is repealed and a new Section  
15 55-1-205 NMSA 1978 is enacted to read:

16 "55-1-205. [NEW MATERIAL] REASONABLE TIME--  
17 SEASONABLENESS.--

18 (a) Whether a time for taking an action required by  
19 the Uniform Commercial Code is reasonable depends on the  
20 nature, purpose and circumstances of the action.

21 (b) An action is taken seasonably if it is taken at  
22 or within the time agreed or, if no time is agreed, at or  
23 within a reasonable time."

24 Section 14. Section 55-1-206 NMSA 1978 (being Laws 1961,  
25 Chapter 96, Section 1-206, as amended) is repealed and a new

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1 Section 55-1-206 NMSA 1978 is enacted to read:

2 "55-1-206. [NEW MATERIAL] PRESUMPTIONS.--Whenever the  
3 Uniform Commercial Code creates a "presumption" with respect to  
4 a fact, or provides that a fact is "presumed", the trier of  
5 fact must find the existence of the fact unless and until  
6 evidence is introduced that supports a finding of its  
7 nonexistence."

8 PART 3

9 TERRITORIAL APPLICABILITY AND GENERAL RULES

10 Section 15. A new section of the Uniform Commercial Code,  
11 Section 55-1-301 NMSA 1978, is enacted to read:

12 "55-1-301. [NEW MATERIAL] TERRITORIAL APPLICABILITY;  
13 PARTIES' POWER TO CHOOSE APPLICABLE LAW.--

14 A. Except as otherwise provided in this section,  
15 when a transaction bears a reasonable relation to this state  
16 and also to another state or nation the parties may agree that  
17 the law either of this state or of such other state or nation  
18 shall govern their rights and duties.

19 B. In the absence of an agreement effective under  
20 Subsection A of this section, and except as provided in  
21 Subsection C of this section, the Uniform Commercial Code  
22 applies to transactions bearing an appropriate relation to this  
23 state.

24 C. If one of the following provisions of the  
25 Uniform Commercial Code specifies the applicable law, that

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1 provision governs and a contrary agreement is effective only to  
2 the extent permitted by the law so specified:

- 3 (1) Section 55-2-402 NMSA 1978;
- 4 (2) Sections 55-2A-105 and 55-2A-106 NMSA  
5 1978;
- 6 (3) Section 55-4-102 NMSA 1978;
- 7 (4) Section 55-4A-507 NMSA 1978;
- 8 (5) Section 55-5-116 NMSA 1978;
- 9 (6) Section 55-8-110 NMSA 1978; and
- 10 (7) Sections 55-9-301 through 55-9-307 NMSA  
11 1978."

12 Section 16. A new section of the Uniform Commercial Code,  
13 Section 55-1-302 NMSA 1978, is enacted to read:

14 "55-1-302. [NEW MATERIAL] VARIATION BY AGREEMENT.--

15 (a) Except as otherwise provided in Subsection (b)  
16 of this section or elsewhere in the Uniform Commercial Code,  
17 the effect of provisions of the Uniform Commercial Code may be  
18 varied by agreement.

19 (b) The obligations of good faith, diligence,  
20 reasonableness and care prescribed by the Uniform Commercial  
21 Code may not be disclaimed by agreement. The parties, by  
22 agreement, may determine the standards by which the performance  
23 of those obligations is to be measured if those standards are  
24 not manifestly unreasonable. Whenever the Uniform Commercial  
25 Code requires an action to be taken within a reasonable time, a

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1 time that is not manifestly unreasonable may be fixed by  
2 agreement.

3 (c) The presence in certain provisions of the  
4 Uniform Commercial Code of the phrase "unless otherwise  
5 agreed", or words of similar import, does not imply that the  
6 effect of other provisions may not be varied by agreement under  
7 this section."

8 Section 17. A new section of the Uniform Commercial Code,  
9 Section 55-1-303 NMSA 1978, is enacted to read:

10 "55-1-303. [NEW MATERIAL] COURSE OF PERFORMANCE, COURSE  
11 OF DEALING AND USAGE OF TRADE.--

12 (a) A "course of performance" is a sequence of  
13 conduct between the parties to a particular transaction that  
14 exists if:

15 (1) the agreement of the parties with respect  
16 to the transaction involves repeated occasions for performance  
17 by a party; and

18 (2) the other party, with knowledge of the  
19 nature of the performance and opportunity for objection to it,  
20 accepts the performance or acquiesces in it without objection.

21 (b) A "course of dealing" is a sequence of conduct  
22 concerning previous transactions between the parties to a  
23 particular transaction that is fairly to be regarded as  
24 establishing a common basis of understanding for interpreting  
25 their expressions and other conduct.

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1 (c) A "usage of trade" is any practice or method of  
2 dealing having such regularity of observance in a place,  
3 vocation or trade as to justify an expectation that it will be  
4 observed with respect to the transaction in question. The  
5 existence and scope of such a usage must be proved as facts.  
6 If it is established that such a usage is embodied in a trade  
7 code or similar record, the interpretation of the record is a  
8 question of law.

9 (d) A course of performance or course of dealing  
10 between the parties or usage of trade in the vocation or trade  
11 in which they are engaged or of which they are or should be  
12 aware is relevant in ascertaining the meaning of the parties'  
13 agreement, may give particular meaning to specific terms of the  
14 agreement and may supplement or qualify the terms of the  
15 agreement. A usage of trade applicable in the place in which  
16 part of the performance under the agreement is to occur may be  
17 so utilized as to that part of the performance.

18 (e) Except as otherwise provided in Subsection (f)  
19 of this section, the express terms of an agreement and any  
20 applicable course of performance, course of dealing or usage of  
21 trade must be construed whenever reasonable as consistent with  
22 each other. If such a construction is unreasonable:

23 (1) express terms prevail over course of  
24 performance, course of dealing, and usage of trade;

25 (2) course of performance prevails over course

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1 of dealing and usage of trade; and

2 (3) course of dealing prevails over usage of  
3 trade.

4 (f) Subject to Section 55-2-209 NMSA 1978, a course  
5 of performance is relevant to show a waiver or modification of  
6 any term inconsistent with the course of performance.

7 (g) Evidence of a relevant usage of trade offered  
8 by one party is not admissible unless that party has given the  
9 other party notice that the court finds sufficient to prevent  
10 unfair surprise to the other party."

11 Section 18. A new section of the Uniform Commercial Code,  
12 Section 55-1-304 NMSA 1978, is enacted to read:

13 "55-1-304. [NEW MATERIAL] OBLIGATION OF GOOD FAITH.--  
14 Every contract or duty within the Uniform Commercial Code  
15 imposes an obligation of good faith in its performance and  
16 enforcement."

17 Section 19. A new section of the Uniform Commercial Code,  
18 Section 55-1-305 NMSA 1978, is enacted to read:

19 "55-1-305. [NEW MATERIAL] REMEDIES TO BE LIBERALLY  
20 ADMINISTERED.--

21 (a) The remedies provided by the Uniform Commercial  
22 Code must be liberally administered to the end that the  
23 aggrieved party may be put in as good a position as if the  
24 other party had fully performed but neither consequential or  
25 special damages nor penal damages may be had except as

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1 specifically provided in the Uniform Commercial Code or by  
2 other rule of law.

3 (b) Any right or obligation declared by the Uniform  
4 Commercial Code is enforceable by action unless the provision  
5 declaring it specifies a different and limited effect."

6 Section 20. A new section of the Uniform Commercial Code,  
7 Section 55-1-306 NMSA 1978, is enacted to read:

8 "55-1-306. [NEW MATERIAL] WAIVER OR RENUNCIATION OF CLAIM  
9 OR RIGHT AFTER BREACH.--A claim or right arising out of an  
10 alleged breach may be discharged in whole or in part without  
11 consideration by agreement of the aggrieved party in an  
12 authenticated record."

13 Section 21. A new section of the Uniform Commercial Code,  
14 Section 55-1-307 NMSA 1978, is enacted to read:

15 "55-1-307. [NEW MATERIAL] PRIMA FACIE EVIDENCE BY THIRD-  
16 PARTY DOCUMENTS.--A document in due form purporting to be a  
17 bill of lading, policy or certificate of insurance, official  
18 weigher's or inspector's certificate, consular invoice or any  
19 other document authorized or required by the contract to be  
20 issued by a third party is prima facie evidence of its own  
21 authenticity and genuineness and of the facts stated in the  
22 document by the third party."

23 Section 22. A new section of the Uniform Commercial Code,  
24 Section 55-1-308 NMSA 1978, is enacted to read:

25 "55-1-308. [NEW MATERIAL] PERFORMANCE OR ACCEPTANCE UNDER  
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1 RESERVATION OF RIGHTS.--

2 (a) A party that with explicit reservation of  
3 rights performs or promises performance or assents to  
4 performance in a manner demanded or offered by the other party  
5 does not thereby prejudice the rights reserved. Such words as  
6 "without prejudice", "under protest" or the like are  
7 sufficient.

8 (b) Subsection (a) of this section does not apply  
9 to an accord and satisfaction."

10 Section 23. A new section of the Uniform Commercial Code,  
11 Section 55-1-309 NMSA 1978, is enacted to read:

12 "55-1-309. [NEW MATERIAL] OPTION TO ACCELERATE AT WILL.--  
13 A term providing that one party or that party's successor in  
14 interest may accelerate payment or performance or require  
15 collateral or additional collateral "at will" or when the party  
16 "deems itself insecure" or words of similar import means that  
17 the party has power to do so only if that party in good faith  
18 believes that the prospect of payment or performance is  
19 impaired. The burden of establishing lack of good faith is on  
20 the party against which the power has been exercised."

21 Section 24. A new section of the Uniform Commercial Code,  
22 Section 55-1-310 NMSA 1978, is enacted to read:

23 "55-1-310. [NEW MATERIAL] SUBORDINATED OBLIGATIONS.--An  
24 obligation may be issued as subordinated to performance of  
25 another obligation of the person obligated, or a creditor may

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1 subordinate its right to performance of an obligation by  
2 agreement with either the person obligated or another creditor  
3 of the person obligated. Subordination does not create a  
4 security interest as against either the common debtor or a  
5 subordinated creditor."

6 Section 25. Section 55-2-103 NMSA 1978 (being Laws 1961,  
7 Chapter 96, Section 2-103, as amended) is amended to read:

8 "55-2-103. DEFINITIONS AND INDEX OF DEFINITIONS.--

9 (1) In this article, unless the context otherwise  
10 requires:

11 (a) "buyer" means a person who buys or  
12 contracts to buy goods;

13 (b) [~~"good faith" in the case of a merchant~~  
14 ~~means honesty in fact and the observance of reasonable~~  
15 ~~commercial standards of fair dealing in the trade~~] [reserved];

16 (c) "receipt" of goods means taking physical  
17 possession of them; and

18 (d) "seller" means a person who sells or  
19 contracts to sell goods.

20 (2) Other definitions applying to this article, or  
21 to specified parts thereof, and the sections in which they  
22 appear are:

23 "acceptance". . . . .Section  
24 55-2-606 NMSA 1978;

25 "banker's credit". . . . .Section

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1 55-2-325 NMSA 1978;  
2 "between merchants". . . . . Section  
3 55-2-104 NMSA 1978;  
4 "cancellation". . . . .Section  
5 55-2-106[~~(4)~~] NMSA 1978;  
6 "commercial unit". . . . . Section  
7 55-2-105 NMSA 1978;  
8 "confirmed credit". . . . .Section  
9 55-2-325 NMSA 1978;  
10 "conforming to contract". . . . .Section  
11 55-2-106 NMSA 1978;  
12 "contract for sale". . . . . Section  
13 55-2-106 NMSA 1978;  
14 "cover". . . . . Section  
15 55-2-712 NMSA 1978;  
16 "entrusting". . . . .Section  
17 55-2-403 NMSA 1978;  
18 "financing agency". . . . .Section  
19 55-2-104 NMSA 1978;  
20 "future goods". . . . .Section  
21 55-2-105 NMSA 1978;  
22 "goods". . . . . Section  
23 55-2-105 NMSA 1978;  
24 "identification". . . . .Section  
25 55-2-501 NMSA 1978;

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1 "installment contract". . . . .Section  
2 55-2-612 NMSA 1978;  
3 "letter of credit". . . . .Section  
4 55-2-325 NMSA 1978;  
5 "lot". . . . . Section  
6 55-2-105 NMSA 1978;  
7 "merchant". . . . .Section  
8 55-2-104 NMSA 1978;  
9 "overseas". . . . .Section  
10 55-2-323 NMSA 1978;  
11 "person in the position of a  
12 seller". . . . .Section  
13 55-2-707 NMSA 1978;  
14 "present sale". . . . .Section  
15 55-2-106 NMSA 1978;  
16 "sale". . . . .Section  
17 55-2-106 NMSA 1978;  
18 "sale on approval". . . . .Section  
19 55-2-326 NMSA 1978;  
20 "sale or return". . . . .Section  
21 55-2-326 NMSA 1978; and  
22 "termination". . . . . Section  
23 55-2-106 NMSA 1978.

24 (3) "Control", as provided in Section 55-7-106 NMSA  
25 1978, and the following definitions in other articles apply to  
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1 this article:  
2 "check". . . . . Section  
3 55-3-104 NMSA 1978;  
4 "consignee". . . . . Section  
5 55-7-102 NMSA 1978;  
6 "consignor". . . . . Section  
7 55-7-102 NMSA 1978;  
8 "consumer goods". . . . . Section  
9 55-9-102 NMSA 1978;  
10 "dishonor". . . . . Section  
11 55-3-502 NMSA 1978; and  
12 "draft". . . . . Section  
13 55-3-104 NMSA 1978.

14 (4) In addition, Chapter 55, Article 1 NMSA 1978  
15 contains general definitions and principles of construction and  
16 interpretation applicable throughout this article."

17 Section 26. Section 55-2-104 NMSA 1978 (being Laws 1961,  
18 Chapter 96, Section 2-104) is amended to read:

19 "55-2-104. DEFINITIONS--"MERCHANT"--"BETWEEN MERCHANTS"--  
20 "FINANCING AGENCY".--

21 (1) "Merchant" means a person who deals in goods of  
22 the kind or otherwise by his occupation holds himself out as  
23 having knowledge or skill peculiar to the practices or goods  
24 involved in the transaction or to whom such knowledge or skill  
25 may be attributed by his employment of an agent or broker or

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1 other intermediary who by his occupation holds himself out as  
2 having such knowledge or skill.

3 (2) "Financing agency" means a bank, finance  
4 company or other person who in the ordinary course of business  
5 makes advances against goods or documents of title or who by  
6 arrangement with either the seller or the buyer intervenes in  
7 ordinary course to make or collect payment due or claimed under  
8 the contract for sale, as by purchasing or paying the seller's  
9 draft or making advances against it or by merely taking it for  
10 collection whether or not documents of title accompany or are  
11 associated with the draft. "Financing agency" includes also a  
12 bank or other person who similarly intervenes between persons  
13 who are in the position of seller and buyer in respect to the  
14 goods (Section [~~2-707~~] 55-2-707 NMSA 1978).

15 (3) "Between merchants" means in any transaction  
16 with respect to which both parties are chargeable with the  
17 knowledge or skill of merchants."

18 Section 27. Section 55-2-202 NMSA 1978 (being Laws 1961,  
19 Chapter 96, Section 2-202) is amended to read:

20 "55-2-202. FINAL WRITTEN EXPRESSION--PAROL OR EXTRINSIC  
21 EVIDENCE.--Terms with respect to which the confirmatory  
22 memoranda of the parties agree or [~~which~~] that are otherwise  
23 set forth in a writing intended by the parties as a final  
24 expression of their agreement with respect to such terms as are  
25 included therein may not be contradicted by evidence of any

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1 prior agreement or of a contemporaneous oral agreement but may  
2 be explained or supplemented:

3 (a) by course of performance, course of dealing or  
4 usage of trade (Section [~~1-205~~ or ~~by course of performance~~  
5 (~~Section 2-208~~)] 55-1-303 NMSA 1978) ; and

6 (b) by evidence of consistent additional terms  
7 unless the court finds the writing to have been intended also  
8 as a complete and exclusive statement of the terms of the  
9 agreement."

10 Section 28. Section 55-2-310 NMSA 1978 (being Laws 1961,  
11 Chapter 96, Section 2-310) is amended to read:

12 "55-2-310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT--  
13 AUTHORITY TO SHIP UNDER RESERVATION.--Unless otherwise agreed:

14 (a) payment is due at the time and place at which  
15 the buyer is to receive the goods even though the place of  
16 shipment is the place of delivery; and

17 (b) if the seller is authorized to send the goods,  
18 [~~he~~] the seller may ship them under reservation, and may tender  
19 the documents of title, but the buyer may inspect the goods  
20 after their arrival before payment is due unless such  
21 inspection is inconsistent with the terms of the contract  
22 (Section [~~2-513~~] 55-2-513 NMSA 1978); and

23 (c) if delivery is authorized and made by way of  
24 documents of title otherwise than by Subsection (b) of this  
25 section then payment is due regardless of where the goods are

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1 to be received: (i) at the time and place at which the buyer  
2 is to receive delivery of the tangible documents [~~regardless of~~  
3 ~~where the goods are to be received~~] or (ii) at the time the  
4 buyer is to receive delivery of the electronic documents and at  
5 the seller's place of business or, if none, the seller's  
6 residence; and

7 (d) where the seller is required or authorized to  
8 ship the goods on credit the credit period runs from the time  
9 of shipment but post-dating the invoice or delaying its  
10 dispatch will correspondingly delay the starting of the credit  
11 period."

12 Section 29. Section 55-2-323 NMSA 1978 (being Laws 1961,  
13 Chapter 96, Section 2-323) is amended to read:

14 "55-2-323. FORM OF BILL OF LADING REQUIRED ON OVERSEAS  
15 SHIPMENT--"OVERSEAS".--

16 (1) Where the contract contemplates overseas  
17 shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel,  
18 the seller unless otherwise agreed must obtain a negotiable  
19 bill of lading stating that the goods have been loaded on board  
20 or, in the case of a term C.I.F. or C.&F., received for  
21 shipment.

22 (2) Where in a case within Subsection (1) of this  
23 section a tangible bill of lading has been issued in a set of  
24 parts, unless otherwise agreed if the documents are not to be  
25 sent from abroad the buyer may demand tender of the full set;

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1 otherwise only one part of the bill of lading need be tendered.  
2 Even if the agreement expressly requires a full set:

3 (a) due tender of a single part is acceptable  
4 within the provisions of this article on cure of improper  
5 delivery (Subsection (1) of Section [~~2-508~~] 55-2-508 NMSA  
6 1978); and

7 (b) even though the full set is demanded, if  
8 the documents are sent from abroad the person tendering an  
9 incomplete set may nevertheless require payment upon furnishing  
10 an indemnity [~~which~~] that the buyer in good faith deems  
11 adequate.

12 (3) A shipment by water or by air or a contract  
13 contemplating such shipment is "overseas" insofar as, by usage  
14 of trade or agreement, it is subject to the commercial,  
15 financing or shipping practices characteristic of international  
16 deep water commerce."

17 Section 30. Section 55-2-401 NMSA 1978 (being Laws 1961,  
18 Chapter 96, Section 2-401) is amended to read:

19 "55-2-401. PASSING OF TITLE--RESERVATION FOR SECURITY--  
20 LIMITED APPLICATION OF THIS SECTION.--Each provision of this  
21 article with regard to the rights, obligations and remedies of  
22 the seller, the buyer, purchasers or other third parties  
23 applies irrespective of title to the goods except where the  
24 provision refers to such title. Insofar as situations are not  
25 covered by the other provisions of this article and matters

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1 concerning title become material, the following rules apply:

2 (1) title to goods cannot pass under a contract for  
3 sale prior to their identification to the contract (Section  
4 ~~[2-501]~~ 55-2-501 NMSA 1978), and unless otherwise explicitly  
5 agreed, the buyer acquires by their identification a special  
6 property as limited by ~~[this Act]~~ the Uniform Commercial Code.

7 Any retention or reservation by the seller of the title  
8 (property) in goods shipped or delivered to the buyer is  
9 limited in effect to a reservation of a security interest.

10 Subject to these provisions and to the provisions of ~~[the~~  
11 ~~article on Secured Transactions (Article 9)]~~ Chapter 55,  
12 Article 9 NMSA 1978, title to goods passes from the seller to  
13 the buyer in any manner and on any conditions explicitly agreed  
14 on by the parties;

15 (2) unless otherwise explicitly agreed, title  
16 passes to the buyer at the time and place at which the seller  
17 completes his performance with reference to the physical  
18 delivery of the goods, despite any reservation of a security  
19 interest and even though a document of title is to be delivered  
20 at a different time or place and in particular and despite any  
21 reservation of a security interest by the bill of lading:

22 (a) if the contract requires or authorizes the  
23 seller to send the goods to the buyer but does not require  
24 ~~[him]~~ the seller to deliver them at destination, title passes  
25 to the buyer at the time and place of shipment; but

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1 (b) if the contract requires delivery at  
2 destination, title passes on tender there;

3 (3) unless otherwise explicitly agreed where  
4 delivery is to be made without moving the goods:

5 (a) if the seller is to deliver a tangible  
6 document of title, title passes at the time when and the place  
7 where ~~he~~ the seller delivers such documents and if the seller  
8 is to deliver an electronic document of title, title passes  
9 when the seller delivers the document; or

10 (b) if the goods are at the time of  
11 contracting already identified and no documents are to be  
12 delivered, title passes at the time and place of contracting;  
13 and

14 (4) a rejection or other refusal by the buyer to  
15 receive or retain the goods, whether or not justified, or a  
16 justified revocation of acceptance revests title to the goods  
17 in the seller. Such reversion occurs by operation of law and  
18 is not a "sale".

19 Section 31. Section 55-2-503 NMSA 1978 (being Laws 1961,  
20 Chapter 96, Section 2-503) is amended to read:

21 "55-2-503. MANNER OF SELLER'S TENDER OF DELIVERY.--

22 (1) Tender of delivery requires that the seller put  
23 and hold conforming goods at the buyer's disposition and give  
24 the buyer any notification reasonably necessary to enable ~~him~~  
25 the buyer to take delivery. The manner, time and place for

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1 tender are determined by the agreement and this article, and in  
2 particular:

3 (a) tender must be at a reasonable hour, and  
4 if it is of goods they must be kept available for the period  
5 reasonably necessary to enable the buyer to take possession;  
6 but

7 (b) unless otherwise agreed the buyer must  
8 furnish facilities reasonably suited to the receipt of the  
9 goods.

10 (2) Where the case is within [~~the next~~] Section  
11 55-2-504 NMSA 1978 respecting shipment tender requires that the  
12 seller comply with its provisions.

13 (3) Where the seller is required to deliver at a  
14 particular destination tender requires that [~~he~~] the seller  
15 comply with Subsection (1) of this section and also in any  
16 appropriate case tender documents as described in Subsections  
17 (4) and (5) of this section.

18 (4) Where goods are in the possession of the bailee  
19 and are to be delivered without being moved:

20 (a) tender requires that the seller either  
21 tender a negotiable document of title covering such goods or  
22 procure acknowledgement of the bailee of the buyer's right to  
23 possession of the goods; but

24 (b) tender to the buyer of a nonnegotiable  
25 document of title or of a [~~written direction to~~] record

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1 directing the bailee to deliver is sufficient tender unless the  
2 buyer seasonably objects, and except as otherwise provided in  
3 Chapter 55, Article 9 NMSA 1978, receipt by the bailee of  
4 notification of the buyer's rights fixes those rights as  
5 against the bailee and all third persons; but risk of loss of  
6 the goods and of any failure by the bailee to honor the  
7 nonnegotiable document of title or to obey the direction  
8 remains on the seller until the buyer has had a reasonable time  
9 to present the document or direction, and a refusal by the  
10 bailee to honor the document or to obey the direction defeats  
11 the tender.

12 (5) Where the contract requires the seller to  
13 deliver documents:

14 (a) [~~he~~] the seller must tender all such  
15 documents in correct form, except as provided in this article  
16 with respect to bills of lading in a set (Subsection (2) of  
17 Section [~~2-323~~] 55-2-323 NMSA 1978); and

18 (b) tender through customary banking channels  
19 is sufficient and dishonor of a draft accompanying or  
20 associated with the documents constitutes nonacceptance or  
21 rejection."

22 Section 32. Section 55-2-505 NMSA 1978 (being Laws 1961,  
23 Chapter 96, Section 2-505) is amended to read:

24 "55-2-505. SELLER'S SHIPMENT UNDER RESERVATION.--

25 (1) Where the seller has identified goods to the

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1 contract by or before shipment:

2 (a) his procurement of a negotiable bill of  
3 lading to his own order or otherwise reserves in him a security  
4 interest in the goods. His procurement of the bill to the  
5 order of a financing agency or of the buyer indicates in  
6 addition only the seller's expectation of transferring that  
7 interest to the person named; and

8 (b) a nonnegotiable bill of lading to himself  
9 or his nominee reserves possession of the goods as security but  
10 except in a case of conditional delivery (Subsection (2) of  
11 Section [~~2-507~~] 55-2-507 NMSA 1978) a nonnegotiable bill of  
12 lading naming the buyer as consignee reserves no security  
13 interest even though the seller retains possession or control  
14 of the bill of lading.

15 (2) When shipment by the seller with reservation of  
16 a security interest is in violation of the contract for sale,  
17 it constitutes an improper contract for transportation within  
18 the preceding section but impairs neither the rights given to  
19 the buyer by shipment and identification of the goods to the  
20 contract nor the seller's powers as a holder of a negotiable  
21 document of title."

22 Section 33. Section 55-2-506 NMSA 1978 (being Laws 1961,  
23 Chapter 96, Section 2-506) is amended to read:

24 "55-2-506. RIGHTS OF FINANCING AGENCY.--

25 (1) A financing agency by paying or purchasing for

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1 value a draft [~~which~~] that relates to a shipment of goods  
2 acquires to the extent of the payment or purchase and in  
3 addition to its own rights under the draft and any document of  
4 title securing it any rights of the shipper in the goods,  
5 including the right to stop delivery and the shipper's right to  
6 have the draft honored by the buyer.

7 (2) The right to reimbursement of a financing  
8 agency [~~which~~] that has in good faith honored or purchased the  
9 draft under commitment to or authority from the buyer is not  
10 impaired by subsequent discovery of defects with reference to  
11 any relevant document [~~which~~] that was apparently regular [~~on~~  
12 ~~its face~~]."

13 Section 34. Section 55-2-509 NMSA 1978 (being Laws 1961,  
14 Chapter 96, Section 2-509) is amended to read:

15 "55-2-509. RISK OF LOSS IN THE ABSENCE OF BREACH.--

16 (1) Where the contract requires or authorizes the  
17 seller to ship the goods by carrier:

18 (a) if it does not require [~~him~~] the seller to  
19 deliver them at a particular destination, the risk of loss  
20 passes to the buyer when the goods are duly delivered to the  
21 carrier even though the shipment is under reservation (Section  
22 [~~2-505~~] 55-2-505 NMSA 1978); but

23 (b) if it does require [~~him~~] the seller to  
24 deliver them at a particular destination and the goods are  
25 there duly tendered while in the possession of the carrier, the

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1 risk of loss passes to the buyer when the goods are there duly  
2 so tendered as to enable the buyer to take delivery.

3 (2) Where the goods are held by a bailee to be  
4 delivered without being moved, the risk of loss passes to the  
5 buyer:

6 (a) on ~~[his]~~ the buyer's receipt of possession  
7 or control of a negotiable document of title covering the  
8 goods; or

9 (b) on acknowledgement by the bailee of the  
10 buyer's right to possession of the goods; or

11 (c) after ~~[his]~~ the buyer's receipt of  
12 possession or control of a nonnegotiable document of title or  
13 other ~~[written]~~ direction to deliver in a record, as provided  
14 in Paragraph (b) of Subsection (4) ~~[-b-]~~ of Section ~~[2-503]~~  
15 55-2-503 NMSA 1978.

16 (3) In any case not within Subsection (1) or (2) of  
17 this section, the risk of loss passes to the buyer on ~~[his]~~ the  
18 buyer's receipt of the goods if the seller is a merchant;  
19 otherwise the risk passes to the buyer on tender of delivery.

20 (4) The provisions of this section are subject to  
21 contrary agreement of the parties and to the provisions of this  
22 article on sale on approval (Section ~~[2-327]~~ 55-2-327 NMSA  
23 1978) and on effect of breach on risk of loss (Section ~~[2-510]~~  
24 55-2-510 NMSA 1978)."

25 Section 35. Section 55-2-605 NMSA 1978 (being Laws 1961,

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1 Chapter 96, Section 2-605) is amended to read:

2 "55-2-605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO  
3 PARTICULARIZE.--

4 (1) The buyer's failure to state in connection with  
5 rejection a particular defect [~~which~~] that is ascertainable by  
6 reasonable inspection precludes [~~him~~] the buyer from relying on  
7 the unstated defect to justify rejection or to establish  
8 breach:

9 (a) where the seller could have cured it if  
10 stated seasonably; or

11 (b) between merchants when the seller has  
12 after rejection made a request in writing for a full and final  
13 written statement of all defects on which the buyer proposes to  
14 rely.

15 (2) Payment against documents made without  
16 reservation of rights precludes recovery of the payment for  
17 defects apparent [~~on the face of~~] in the documents."

18 Section 36. Section 55-2-705 NMSA 1978 (being Laws 1961,  
19 Chapter 96, Section 2-705) is amended to read:

20 "55-2-705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR  
21 OTHERWISE.--

22 (1) The seller may stop delivery of goods in the  
23 possession of a carrier or other bailee when [~~he~~] the seller  
24 discovers the buyer to be insolvent (Section [~~2-702~~] 55-2-702  
25 NMSA 1978) and may stop delivery of carload, truckload,

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1 planeload or larger shipments of express or freight when the  
2 buyer repudiates or fails to make a payment due before delivery  
3 or if for any other reason the seller has a right to withhold  
4 or reclaim the goods.

5 (2) As against such buyer, the seller may stop  
6 delivery until:

7 (a) receipt of the goods by the buyer; or

8 (b) acknowledgment to the buyer by any bailee  
9 of the goods except a carrier that the bailee holds the goods  
10 for the buyer; or

11 (c) such acknowledgment to the buyer by a  
12 carrier by reshipment or as ~~[warehouseman]~~ a warehouse; or

13 (d) negotiation to the buyer of any negotiable  
14 document of title covering the goods.

15 (3) (a) To stop delivery the seller must so notify  
16 as to enable the bailee by reasonable diligence to prevent  
17 delivery of the goods.

18 (b) After such notification the bailee must  
19 hold and deliver the goods according to the directions of the  
20 seller but the seller is liable to the bailee for any ensuing  
21 charges or damages.

22 (c) If a negotiable document of title has been  
23 issued for goods the bailee is not obliged to obey a  
24 notification to stop until surrender of possession or control  
25 of the document.

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1 (d) A carrier who has issued a nonnegotiable  
2 bill of lading is not obliged to obey a notification to stop  
3 received from a person other than the consignor."

4 Section 37. Section 55-2A-103 NMSA 1978 (being Laws 1992,  
5 Chapter 114, Section 10, as amended) is amended to read:

6 "55-2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.--

7 (1) In this article unless the context otherwise  
8 requires:

9 (a) "buyer in ordinary course of business"  
10 means a person who, in good faith and without knowledge that  
11 the sale to [~~him~~] that person is in violation of the ownership  
12 rights or security interest or leasehold interest of a third  
13 party in the goods, buys in ordinary course from a person in  
14 the business of selling goods of that kind, but does not  
15 include a pawnbroker. "Buying" may be for cash or by exchange  
16 of other property or on secured or unsecured credit and  
17 includes [~~receiving~~] acquiring goods or documents of title  
18 under a preexisting contract for sale but does not include a  
19 transfer in bulk or as security for or in total or partial  
20 satisfaction of a money debt;

21 (b) "cancellation" occurs when either party  
22 puts an end to the lease contract for default by the other  
23 party;

24 (c) "commercial unit" means such a unit of  
25 goods as by commercial usage is a single whole for purposes of

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1 lease and division of which materially impairs its character or  
2 value on the market or in use. A commercial unit may be a  
3 single article, as a machine, or a set of articles, as a suite  
4 of furniture or a line of machinery, or a quantity, as a gross  
5 or carload, or any other unit treated in use or in the relevant  
6 market as a single whole;

7 (d) "conforming" goods or performance under a  
8 lease contract means goods or performance that are in  
9 accordance with the obligations under the lease contract;

10 (e) "consumer lease" means a lease that a  
11 lessor regularly engaged in the business of leasing or selling  
12 makes to a lessee who is an individual and who takes under the  
13 lease primarily for a personal, family or household purpose;

14 (f) "fault" means wrongful act, omission,  
15 breach or default;

16 (g) "finance lease" means a lease with respect  
17 to which:

18 (i) the lessor does not select,  
19 manufacture or supply the goods;

20 (ii) the lessor acquires the goods or  
21 the right to possession and use of the goods in connection with  
22 the lease; and

23 (iii) one of the following occurs:

24 (A) the lessee receives a copy of  
25 the contract by which the lessor acquired the goods or the

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1 right to possession and use of the goods before signing the  
2 lease contract;

3 (B) the lessee's approval of the  
4 contract by which the lessor acquired the goods or the right to  
5 possession and use of the goods is a condition to effectiveness  
6 of the lease contract;

7 (C) the lessee, before signing the  
8 lease contract, receives an accurate and complete statement  
9 designating the promises and warranties, and any disclaimers of  
10 warranties, limitations or modifications of remedies, or  
11 liquidated damages, including those of a third party, such as  
12 the manufacturer of the goods, provided to the lessor by the  
13 person supplying the goods in connection with or as part of the  
14 contract by which the lessor acquired the goods or the right to  
15 possession and use of the goods; or

16 (D) if the lease is not a consumer  
17 lease, the lessor, before the lessee signs the lease contract,  
18 informs the lessee in writing (a) of the identity of the person  
19 supplying the goods to the lessor, unless the lessee has  
20 selected that person and directed the lessor to acquire the  
21 goods or the right to possession and use of the goods from that  
22 person; (b) that the lessee is entitled under this article to  
23 the promises and warranties, including those of any third  
24 party, provided to the lessor by the person supplying the goods  
25 in connection with or as part of the contract by which the

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1 lessor acquired the goods or the right to possession and use of  
2 the goods; and (c) that the lessee may communicate with the  
3 person supplying the goods to the lessor and receive an  
4 accurate and complete statement of those promises and  
5 warranties, including any disclaimers and limitations of them  
6 or of remedies;

7 (h) "goods" means all things that are movable  
8 at the time of identification to the lease contract or are  
9 fixtures (Section 55-2A-309 NMSA 1978), but the term does not  
10 include money, documents, instruments, accounts, chattel paper,  
11 general intangibles or minerals or the like, including oil and  
12 gas, before extraction. The term also includes the unborn  
13 young of animals;

14 (i) "installment lease contract" means a lease  
15 contract that authorizes or requires the delivery of goods in  
16 separate lots to be separately accepted, even though the lease  
17 contract contains a clause "each delivery is a separate lease"  
18 or its equivalent;

19 (j) "lease" means a transfer of the right to  
20 possession and use of goods for a term in return for  
21 consideration, but a sale, including a sale on approval or a  
22 sale or return, or retention or creation of a security interest  
23 is not a lease; unless the context clearly indicates otherwise,  
24 the term includes a sublease;

25 (k) "lease agreement" means the bargain, with

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1 respect to the lease, of the lessor and the lessee in fact as  
2 found in their language or by implication from other  
3 circumstances, including course of dealing or usage or trade or  
4 course of performance as provided in this article; unless the  
5 context clearly indicates otherwise, the term includes a  
6 sublease agreement;

7 (l) "lease contract" means the total legal  
8 obligation that results from the lease agreement as affected by  
9 this article and any other applicable rules of law; unless the  
10 context clearly indicates otherwise, the term includes a  
11 sublease contract;

12 (m) "leasehold interest" means the interest of  
13 the lessor or the lessee under a lease contract;

14 (n) "lessee" means a person who acquires the  
15 right to possession and use of goods under a lease; unless the  
16 context clearly indicates otherwise, the term includes a  
17 sublessee;

18 (o) "lessee in ordinary course of business"  
19 means a person who in good faith and without knowledge that the  
20 lease to ~~[him]~~ that person is in violation of the ownership  
21 rights or security interest or leasehold interest of a third  
22 party in the goods, leases in ordinary course from a person in  
23 the business of selling or leasing goods of that kind, but does  
24 not include a pawnbroker; "leasing" may be for cash or by  
25 exchange of other property or on secured or unsecured credit

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1 and includes ~~[receiving]~~ acquiring goods or documents of title  
2 under a preexisting lease contract but does not include a  
3 transfer in bulk or as security for or in total or partial  
4 satisfaction of a money debt;

5 (p) "lessor" means a person who transfers the  
6 right to possession and use of goods under a lease; unless the  
7 context clearly indicates otherwise, the term includes a  
8 sublessor;

9 (q) "lessor's residual interest" means the  
10 lessor's interest in the goods after expiration, termination or  
11 cancellation of the lease contract;

12 (r) "lien" means a charge against or interest  
13 in goods to secure payment of a debt or performance of an  
14 obligation, but the term does not include a security interest;

15 (s) "lot" means a parcel or a single article  
16 that is the subject matter of a separate lease or delivery  
17 whether or not it is sufficient to perform the lease contract;

18 (t) "merchant lessee" means a lessee that is a  
19 merchant with respect to goods of the kind subject to the  
20 lease;

21 (u) "present value" means the amount as of a  
22 date certain of one or more sums payable in the future,  
23 discounted to the date certain. The discount is determined by  
24 the interest rate specified by the parties if the rate was not  
25 manifestly unreasonable at the time the transaction was entered

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1 into; otherwise, the discount is determined by a commercially  
2 reasonable rate that takes into account the facts and  
3 circumstances of each case at the time the transaction was  
4 entered into;

5 (v) "purchase" includes taking by sale, lease,  
6 mortgage, security interest, pledge, gift or any other  
7 voluntary transaction creating an interest in goods;

8 (w) "sublease" means a lease of goods the  
9 right to possession and use of which was acquired by the lessor  
10 as a lessee under an existing lease;

11 (x) "supplier" means a person from whom a  
12 lessor buys or leases goods to be leased under a finance lease;

13 (y) "supply contract" means a contract under  
14 which a lessor buys or leases goods to be leased; and

15 (z) "termination" occurs when either party  
16 pursuant to a power created by agreement or law puts an end to  
17 the lease contract otherwise than for default.

18 (2) Other definitions applying to this article and  
19 the sections in which they appear are:

20 "accessions" . . . . . Section  
21 55-2A-310[~~(1)~~] NMSA 1978;

22 "construction mortgage" . . . . . Section  
23 55-2A-309[~~(1)~~~~(d)~~] NMSA 1978;

24 "encumbrance" . . . . . Section  
25 55-2A-309[~~(1)~~~~(e)~~] NMSA 1978;

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1           "fixtures". . . . . Section  
2 55-2A-309[~~(1)(a)~~] NMSA 1978;  
3           "fixture filing". . . . . Section  
4 55-2A-309[~~(1)(b)~~] NMSA 1978; and  
5           "purchase money lease" . . . . . Section  
6 55-2A-309[~~(1)(c)~~] NMSA 1978.

7           (3) The following definitions in other articles  
8 apply to this article:

9           "account" . . . . . Paragraph (2)  
10 of Subsection (a) of Section 55-9-102 NMSA 1978;

11           "between merchants" . . . . . Subsection (3)  
12 of Section 55-2-104 NMSA 1978;

13           "buyer" . . . . . Paragraph (a)  
14 of Subsection (1) of Section 55-2-103 NMSA 1978;

15           "chattel paper" . . . . . Paragraph (11)  
16 of Subsection (a) of Section 55-9-102 NMSA 1978;

17           "consumer goods". . . . . Paragraph (23)  
18 of Subsection (a) of Section 55-9-102 NMSA 1978;

19           "document". . . . . Paragraph (30)  
20 of Subsection (a) of Section 55-9-102 NMSA 1978;

21           "entrusting". . . . . Subsection (3)  
22 of Section 55-2-403 NMSA 1978;

23           "general intangible". . . . . Paragraph (42)  
24 of Subsection (a) of Section 55-9-102 NMSA 1978;

25           [~~"good faith". . . . . Paragraph (b)~~

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1 ~~of Subsection (1) of Section 55-2-103 NMSA 1978;~~  
2 "instrument". . . . .Paragraph (47)  
3 of Subsection (a) of Section 55-9-102 NMSA 1978;  
4 "merchant". . . . .Subsection (1)  
5 of Section 55-2-104 NMSA 1978;  
6 "mortgage". . . . .Paragraph (55)  
7 of Subsection (a) of Section 55-9-102 NMSA 1978;  
8 "pursuant to commitment". . . . .Paragraph (68)  
9 of Subsection (a) of Section 55-9-102 NMSA 1978;  
10 "receipt" . . . . .Paragraph (c)  
11 of Subsection (1) of Section 55-2-103 NMSA 1978;  
12 "sale". . . . .Subsection (1)  
13 of Section 55-2-106 NMSA 1978;  
14 "sale on approval". . . . .Section  
15 55-2-326 NMSA 1978;  
16 "sale or return". . . . .Section  
17 55-2-326 NMSA 1978; and  
18 "seller". . . . .Paragraph (d)  
19 of Subsection (1) of Section 55-2-103 NMSA 1978.  
20 (4) In addition, Chapter 55, Article 1 NMSA 1978  
21 contains general definitions and principles of construction and  
22 interpretation applicable throughout this article."  
23 Section 38. Section 55-2A-501 NMSA 1978 (being Laws 1992,  
24 Chapter 114, Section 56) is amended to read:  
25 "55-2A-501. DEFAULT--PROCEDURE.--

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1 (1) Whether the lessor or the lessee is in default  
2 under a lease contract is determined by the lease agreement and  
3 this article.

4 (2) If the lessor or the lessee is in default under  
5 the lease contract, the party seeking enforcement has rights  
6 and remedies as provided in this article and, except as limited  
7 by this article, as provided in the lease agreement.

8 (3) If the lessor or the lessee is in default under  
9 the lease contract, the party seeking enforcement may reduce  
10 the party's claim to judgment, or otherwise enforce the lease  
11 contract by self-help or any available judicial procedure or  
12 nonjudicial procedure, including administrative proceeding,  
13 arbitration or the like, in accordance with this article.

14 (4) Except as otherwise provided in [~~Subsection (1)~~]  
15 ~~of Section 55-1-106 NMSA 1978]~~ Subsection (a) of Section  
16 55-1-305 NMSA 1978 or this article or the lease agreement, the  
17 rights and remedies referred to in Subsections (2) and (3) of  
18 this section are cumulative.

19 (5) If the lease agreement covers both real  
20 property and goods, the party seeking enforcement may proceed  
21 under this part as to the goods, or under other applicable law  
22 as to both the real property and the goods in accordance with  
23 that party's rights and remedies in respect of the real  
24 property, in which case this part does not apply."

25 Section 39. Section 55-2A-514 NMSA 1978 (being Laws 1992,  
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1 Chapter 114, Section 69) is amended to read:

2 "55-2A-514. WAIVER OF LESSEE'S OBJECTIONS.--

3 (1) In rejecting goods, a lessee's failure to state  
4 a particular defect that is ascertainable by reasonable  
5 inspection precludes the lessee from relying on the defect to  
6 justify rejection or to establish default:

7 (a) if, stated seasonably, the lessor or the  
8 supplier could have cured it (Section 55-2A-513 NMSA 1978); or

9 (b) between merchants if the lessor or the  
10 supplier after rejection has made a request in writing for a  
11 full and final written statement of all defects on which the  
12 lessee proposes to rely.

13 (2) A lessee's failure to reserve rights when  
14 paying rent or other consideration against documents precludes  
15 recovery of the payment for defects apparent [~~on the face of~~]  
16 in the documents."

17 Section 40. Section 55-2A-518 NMSA 1978 (being Laws 1992,  
18 Chapter 114, Section 73) is amended to read:

19 "55-2A-518. COVER--SUBSTITUTE GOODS.--

20 (1) After a default by a lessor under the lease  
21 contract of the type described in Subsection (1) of Section  
22 55-2A-508 [~~(1)~~] NMSA 1978, or, if agreed, after other default  
23 by the lessor, the lessee may cover by making any purchase or  
24 lease of or contract to purchase or lease goods in substitution  
25 for those due from the lessor.

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1           (2) Except as otherwise provided with respect to  
2 damages liquidated in the lease agreement (Section 55-2A-504  
3 NMSA 1978) or otherwise determined pursuant to agreement of the  
4 parties (~~[Subsection (3) of Section 15-1-102 NMSA 1978]~~ Section  
5 55-1-302 NMSA 1978 and Section 55-2A-503 NMSA 1978), if a  
6 lessee's cover is by a lease agreement substantially similar to  
7 the original lease agreement and the new lease agreement is  
8 made in good faith and in a commercially reasonable manner, the  
9 lessee may recover from the lessor as damages: (i) the present  
10 value, as of the date of the commencement of the term of the  
11 new lease agreement, of the rent under the new lease agreement  
12 applicable to that period of the new lease term ~~[which]~~ that is  
13 comparable to the then remaining term of the original lease  
14 agreement minus the present value as of the same date of the  
15 total rent for the then remaining lease term of the original  
16 lease agreement; and (ii) any incidental or consequential  
17 damages, less expenses saved in consequence of the lessor's  
18 default.

19           (3) If a lessee's cover is by lease agreement that  
20 for any reason does not qualify for treatment under Subsection  
21 (2) of this section, or is by purchase or otherwise, the lessee  
22 may recover from the lessor as if the lessee had elected not to  
23 cover and Section 55-2A-519 NMSA 1978 governs."

24           Section 41. Section 55-2A-519 NMSA 1978 (being Laws 1992,  
25 Chapter 114, Section 74) is amended to read:

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1 "55-2A-519. LESSEE'S DAMAGES FOR NON-DELIVERY,  
2 REPUDIATION, DEFAULT AND BREACH OF WARRANTY IN REGARD TO  
3 ACCEPTED GOODS.--

4 (1) Except as otherwise provided with respect to  
5 damages liquidated in the lease agreement (~~[Subsection (3) of]~~  
6 Section 55-2A-504 NMSA 1978) or otherwise determined pursuant  
7 to agreement of the parties (Sections ~~[55-1-102]~~ 55-1-302 and  
8 55-2A-503 NMSA 1978), if a lessee elects not to cover or a  
9 lessee elects to cover and the cover is by lease agreement that  
10 for any reason does not qualify for treatment under Subsection  
11 (2) of Section 55-2A-518 ~~[+2]~~ NMSA 1978, or is by purchase or  
12 otherwise, the measure of damages for non-delivery or  
13 repudiation by the lessor or for rejection or revocation of  
14 acceptance by the lessee is the present value, as of the date  
15 of the default, of the then market rent minus the present value  
16 as of the same date of the original rent, computed for the  
17 remaining lease term of the original lease agreement, together  
18 with incidental and consequential damages, less expenses saved  
19 in consequence of the lessor's default.

20 (2) Market rent is to be determined as of the place  
21 for tender or, in cases of rejection after arrival or  
22 revocation of acceptance, as of the place of arrival.

23 (3) Except as otherwise agreed, if the lessee has  
24 accepted goods and given notification (Subsection (3) of  
25 Section 55-2A-516 ~~[+3]~~ NMSA 1978), the measure of damages for

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1 nonconforming tender or delivery or other default by a lessor  
2 is the loss resulting in the ordinary course of events from the  
3 lessor's default as determined in any manner that is reasonable  
4 together with incidental and consequential damages, less  
5 expenses saved in consequence of the lessor's default.

6 (4) Except as otherwise agreed, the measure of  
7 damages for breach of warranty is the present value at the time  
8 and place of acceptance of the difference between the value of  
9 the use of the goods accepted and the value if they had been as  
10 warranted for the lease term, unless special circumstances show  
11 proximate damages of a different amount, together with  
12 incidental and consequential damages, less expenses saved in  
13 consequence of the lessor's default or breach of warranty."

14 Section 42. Section 55-2A-526 NMSA 1978 (being Laws 1992,  
15 Chapter 114, Section 81) is amended to read:

16 "55-2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR  
17 OTHERWISE.--

18 (1) A lessor may stop delivery of goods in the  
19 possession of a carrier or other bailee if the lessor discovers  
20 the lessee to be insolvent and may stop delivery of carload,  
21 truckload, planeload or larger shipments of express or freight  
22 if the lessee repudiates or fails to make a payment due before  
23 delivery, whether for rent, security or otherwise under the  
24 lease contract, or for any other reason the lessor has a right  
25 to withhold or take possession of the goods.

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1 (2) In pursuing its remedies under Subsection (1)  
2 of this section, the lessor may stop delivery until:

- 3 (a) receipt of the goods by the lessee;  
4 (b) acknowledgment to the lessee by any bailee  
5 of the goods, except a carrier, that the bailee holds the goods  
6 for the lessee; or  
7 (c) such an acknowledgment to the lessee by a  
8 carrier via reshipment or as [~~warehouseman~~] a warehouse.

9 (3) To stop delivery, a lessor shall so notify as  
10 to enable the bailee by reasonable diligence to prevent  
11 delivery of the goods.

12 (4) After notification, the bailee shall hold and  
13 deliver the goods according to the directions of the lessor,  
14 but the lessor is liable to the bailee for any ensuing charges  
15 or damages.

16 (5) A carrier who has issued a nonnegotiable bill  
17 of lading is not obliged to obey a notification to stop  
18 received from a person other than the consignor."

19 Section 43. Section 55-2A-527 NMSA 1978 (being Laws 1992,  
20 Chapter 114, Section 82) is amended to read:

21 "55-2A-527. LESSOR'S RIGHTS TO DISPOSE OF GOODS.--

22 (1) After a default by a lessee under the lease  
23 contract of the type described in [~~Section 55-2A-523(1) or~~  
24 ~~55-2A-523(3)(a)] Subsection (1) or Paragraph (a) of Subsection  
25 (3) of Section 55-2A-523 NMSA 1978 or after the lessor refuses~~

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1 to deliver or takes possession of goods (Section 55-2A-525 or  
2 55-2A-526 NMSA 1978), or, if agreed, after other default by a  
3 lessee, the lessor may dispose of the goods concerned or the  
4 undelivered balance thereof by lease, sale or otherwise.

5 (2) Except as otherwise provided with respect to  
6 damages liquidated in the lease agreement (Section 55-2A-504  
7 NMSA 1978) or otherwise determined pursuant to agreement of the  
8 parties (~~[Subsection (3) of Section 55-1-102 and Section]~~  
9 Sections 55-1-302 and 55-2A-503 NMSA 1978), if the disposition  
10 is by lease agreement substantially similar to the original  
11 lease agreement and the new lease agreement is made in good  
12 faith and in a commercially reasonable manner, the lessor may  
13 recover from the lessee as damages: (i) accrued and unpaid  
14 rent as of the date of the commencement of the term of the new  
15 lease agreement; (ii) the present value, as of the same date,  
16 of the total rent for the then remaining lease term of the  
17 original lease agreement minus the present value, as of the  
18 same date, of the rent under the new lease agreement applicable  
19 to that period of the new lease term which is comparable to the  
20 then remaining term of the original lease agreement; and (iii)  
21 any incidental damages allowed under Section 55-2A-530 NMSA  
22 1978, less expenses saved in consequence of the lessee's  
23 default.

24 (3) If the lessor's disposition is by lease  
25 agreement that for any reason does not qualify for treatment

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1 under Subsection (2) of this section, or is by sale or  
2 otherwise, the lessor may recover from the lessee as if the  
3 lessor had elected not to dispose of the goods and Section  
4 55-2A-528 NMSA 1978 governs.

5 (4) A subsequent buyer or lessee who buys or leases  
6 from the lessor in good faith for value as a result of a  
7 disposition under this section takes the goods free of the  
8 original lease contract and any rights of the original lessee  
9 even though the lessor fails to comply with one or more of the  
10 requirements of this article.

11 (5) The lessor is not accountable to the lessee for  
12 any profit made on any disposition. A lessee who has  
13 rightfully rejected or justifiably revoked acceptance shall  
14 account to the lessor for any excess over the amount of the  
15 lessee's security interest (Subsection (5) of Section  
16 55-2A-508[~~(5)~~] NMSA 1978)."

17 Section 44. Section 55-2A-528 NMSA 1978 (being Laws 1992,  
18 Chapter 114, Section 83) is amended to read:

19 "55-2A-528. LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE  
20 TO PAY, REPUDIATION OR OTHER DEFAULT.--

21 (1) Except as otherwise provided with respect to  
22 damages liquidated in the lease agreement (~~{Section 55-2A-504}~~  
23 NMSA 1978) or otherwise determined pursuant to agreement of the  
24 parties (Sections [~~1-102(3)~~] 55-1-302 and 55-2A-503 NMSA 1978),  
25 if a lessor elects to retain the goods or a lessor elects to

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1 dispose of the goods and the disposition is by lease agreement  
2 that for any reason does not qualify for treatment under  
3 Subsection (2) of Section 55-2A-527[(-2)] NMSA 1978, or is by  
4 sale or otherwise, the lessor may recover from the lessee as  
5 damages for a default of the type described in [~~Section~~  
6 ~~55-2A-523(1) or 55-2A-523(3)(a)] Subsection (1) or Paragraph  
7 (a) of Subsection (3) of Section 55-2A-523 NMSA 1978, or, if  
8 agreed, for other default of the lessee: (i) accrued and  
9 unpaid rent as of the date of default if the lessee has never  
10 taken possession of the goods, or, if the lessee has taken  
11 possession of the goods, as of the date the lessor repossesses  
12 the goods or an earlier date on which the lessee makes a tender  
13 of the goods to the lessor; (ii) the present value as of the  
14 date determined under clause (i) of the total rent for the then  
15 remaining lease term of the original lease agreement minus the  
16 present value as of the same date of the market rent at the  
17 place where the goods are located computed for the same lease  
18 term; and (iii) any incidental damages allowed under Section  
19 55-2A-530 NMSA 1978, less expenses saved in consequence of the  
20 lessee's default.~~

21 (2) If the measure of damages provided in  
22 Subsection (1) of this section is inadequate to put a lessor in  
23 as good a position as performance would have, the measure of  
24 damages is the present value of the profit, including  
25 reasonable overhead, the lessor would have made from full

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1 performance by the lessee, together with any incidental damages  
2 allowed under Section 55-2A-530 NMSA 1978, due allowance for  
3 costs reasonably incurred and due credit for payments or  
4 proceeds of disposition."

5 Section 45. Section 55-3-103 NMSA 1978 (being Laws 1992,  
6 Chapter 114, Section 90) is amended to read:

7 "55-3-103. DEFINITIONS.--

8 (a) In this article:

9 (1) "acceptor" means a drawee who has accepted  
10 a draft;

11 (2) "drawee" means a person ordered in a draft  
12 to make payment;

13 (3) "drawer" means a person who signs or is  
14 identified in a draft as a person ordering payment;

15 (4) [~~"good faith" means honesty in fact and~~  
16 ~~the observance of reasonable commercial standards of fair~~  
17 ~~dealing~~] [Reserved];

18 (5) "maker" means a person who signs or is  
19 identified in a note as a person undertaking to pay;

20 (6) "order" means a written instruction to pay  
21 money signed by the person giving the instruction. The  
22 instruction may be addressed to any person, including the  
23 person giving the instruction, or to one or more persons  
24 jointly or in the alternative but not in succession. An  
25 authorization to pay is not an order unless the person

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1 authorized to pay is also instructed to pay;

2 (7) "ordinary care" in the case of a person  
3 engaged in business means observance of reasonable commercial  
4 standards, prevailing in the area in which the person is  
5 located, with respect to the business in which the person is  
6 engaged. In the case of a bank that takes an instrument for  
7 processing for collection or payment by automated means,  
8 reasonable commercial standards do not require the bank to  
9 examine the instrument if the failure to examine does not  
10 violate the bank's prescribed procedures and the bank's  
11 procedures do not vary unreasonably from general banking usage  
12 not disapproved by this article or [~~Article 4~~] Chapter 55,  
13 Article 4 NMSA 1978;

14 (8) "party" means a party to an instrument;

15 (9) "promise" means a written undertaking to  
16 pay money signed by the person undertaking to pay. An  
17 acknowledgment of an obligation by the obligor is not a promise  
18 unless the obligor also undertakes to pay the obligation;

19 (10) "prove" with respect to a fact means to  
20 meet the burden of establishing the fact (~~[Subsection (8)]~~,  
21 Paragraph (8) of Subsection (b) of Section 55-1-201 NMSA 1978);  
22 and

23 (11) "remitter" means a person who purchases  
24 an instrument from its issuer if the instrument is payable to  
25 an identified person other than the purchaser.

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1 (b) Other definitions applying to this article and  
2 the sections in which they appear are:

3 "acceptance" Section 55-3-409 NMSA 1978;  
4 "accommodated party" Section 55-3-419 NMSA 1978;  
5 "accommodation party" Section 55-3-419 NMSA 1978;  
6 "alteration" Section 55-3-407 NMSA 1978;  
7 "anomalous indorsement" Section 55-3-205 NMSA 1978;  
8 "blank indorsement" Section 55-3-205 NMSA 1978;  
9 "cashier's check" Section 55-3-104 NMSA 1978;  
10 "certificate of deposit" Section 55-3-104 NMSA 1978;  
11 "certified check" Section 55-3-409 NMSA 1978;  
12 "check" Section 55-3-104 NMSA 1978;  
13 "consideration" Section 55-3-303 NMSA 1978;  
14 "draft" Section 55-3-104 NMSA 1978;  
15 "holder in due course" Section 55-3-302 NMSA 1978;  
16 "incomplete instrument" Section 55-3-115 NMSA 1978;  
17 "indorsement" Section 55-3-204 NMSA 1978;  
18 "indorser" Section 55-3-204 NMSA 1978;  
19 "instrument" Section 55-3-104 NMSA 1978;  
20 "issue" Section 55-3-105 NMSA 1978;  
21 "issuer" Section 55-3-105 NMSA 1978;  
22 "negotiable instrument" Section 55-3-104 NMSA 1978;  
23 "negotiation" Section 55-3-201 NMSA 1978;  
24 "note" Section 55-3-104 NMSA 1978;  
25 "payable at a definite

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1	time"	Section 55-3-108 NMSA 1978;
2	"payable on demand"	Section 55-3-108 NMSA 1978;
3	"payable to bearer"	Section 55-3-109 NMSA 1978;
4	"payable to order"	Section 55-3-109 NMSA 1978;
5	"payment"	Section 55-3-602 NMSA 1978;
6	"person entitled to	
7	enforce"	Section 55-3-301 NMSA 1978;
8	"presentment"	Section 55-3-501 NMSA 1978;
9	"reacquisition"	Section 55-3-207 NMSA 1978;
10	"special indorsement"	Section 55-3-205 NMSA 1978;
11	"teller's check"	Section 55-3-104 NMSA 1978;
12	"transfer of instrument"	Section 55-3-203 NMSA 1978;
13	"traveler's check"	Section 55-3-104 NMSA 1978;
14	and	
15	"value"	Section 55-3-303 NMSA 1978.
16	(c) The following definitions in other articles	
17	apply to this article:	
18	"bank"	Section 55-4-105 NMSA 1978;
19	"banking day"	Section 55-4-104 NMSA 1978;
20	"clearing house"	Section 55-4-104 NMSA 1978;
21	"collecting bank"	Section 55-4-105 NMSA 1978;
22	"depository bank"	Section 55-4-105 NMSA 1978;
23	"documentary draft"	Section 55-4-104 NMSA 1978;
24	"intermediary bank"	Section 55-4-105 NMSA 1978;
25	"item"	Section 55-4-104 NMSA 1978;

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1 "payor bank" Section 55-4-105 NMSA 1978;

2 and

3 "suspends payments" Section 55-4-104 NMSA 1978.

4 (d) In addition, [~~Article 1~~] Chapter 55, Article 1  
5 NMSA 1978 contains general definitions and principles of  
6 construction and interpretation applicable throughout this  
7 article."

8 Section 46. Section 55-4-104 NMSA 1978 (being Laws 1961,  
9 Chapter 96, Section 4-104, as amended) is amended to read:

10 "55-4-104. DEFINITIONS AND INDEX OF DEFINITIONS.--

11 (a) In [~~this article~~] Chapter 55, Article 4 NMSA  
12 1978, unless the context otherwise requires:

13 (1) "account" means any deposit or credit  
14 account with a bank, including a demand, time, savings,  
15 passbook, share draft or like account, other than an account  
16 evidenced by a certificate of deposit;

17 (2) "afternoon" means the period of a day  
18 between noon and midnight;

19 (3) "banking day" means the part of a day on  
20 which a bank is open to the public for carrying on  
21 substantially all of its banking functions;

22 (4) "clearinghouse" means an association of  
23 banks or other payors regularly clearing items;

24 (5) "customer" means a person having an  
25 account with a bank or for whom a bank has agreed to collect

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1 items, including a bank that maintains an account at another  
2 bank;

3 (6) "documentary draft" means a draft to be  
4 presented for acceptance or payment if specified documents,  
5 certificated securities pursuant to Section 55-8-102 NMSA 1978  
6 or instructions for uncertificated securities pursuant to  
7 Section 55-8-102 NMSA 1978, or other certificates, statements  
8 or the like are to be received by the drawee or other payor  
9 before acceptance or payment of the drafts;

10 (7) "draft" means a draft as defined in  
11 Section 55-3-104 NMSA 1978 or an item, other than an  
12 instrument, that is an order;

13 (8) "drawee" means a person ordered in a draft  
14 to make payment;

15 (9) "item" means an instrument or a promise or  
16 order to pay money handled by a bank for collection or payment.  
17 The term does not include a payment order governed by Chapter  
18 55, Article 4A NMSA 1978 or a credit or debit card slip;

19 (10) "midnight deadline" with respect to a  
20 bank is midnight on its next banking day following the banking  
21 day on which it receives the relevant item or notice or from  
22 which the time for taking action commences to run, whichever is  
23 later;

24 (11) "settle" means to pay in cash, by  
25 clearinghouse settlement, in a charge or credit or by

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1 remittance or otherwise as agreed. A settlement may be either  
2 provisional or final; and

3 (12) "suspends payments" with respect to a  
4 bank means that it has been closed by order of the supervisory  
5 authorities, that a public officer has been appointed to take  
6 it over or that it ceases or refuses to make payments in the  
7 ordinary course of business.

8 (b) Other definitions applying to ~~[this article]~~  
9 Chapter 55, Article 4 NMSA 1978 and the sections in which they  
10 appear are:

- 11 "agreement for Section 55-4-110 NMSA 1978;
- 12 electronic presentment"
- 13 "bank" Section 55-4-105 NMSA 1978;
- 14 "collecting bank" Section 55-4-105 NMSA 1978;
- 15 "depository bank" Section 55-4-105 NMSA 1978;
- 16 "intermediary bank" Section 55-4-105 NMSA 1978;
- 17 "payor bank" Section 55-4-105 NMSA 1978;
- 18 "presenting bank" Section 55-4-105 NMSA 1978;
- 19 and
- 20 "presentment notice" Section 55-4-110 NMSA 1978.

21 (c) "Control", as provided in Section 55-7-106 NMSA  
22 1978, and the following definitions in other articles apply to  
23 ~~[this article]~~ Chapter 55, Article 4 NMSA 1978:

- 24 "acceptance" Section 55-3-409 NMSA 1978;
- 25 "alteration" Section 55-3-407 NMSA 1978;

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1 "cashier's check" Section 55-3-104 NMSA 1978;  
2 "certificate of Section 55-3-104 NMSA 1978;  
3 deposit"  
4 "certified check" Section 55-3-409 NMSA 1978;  
5 "check" Section 55-3-104 NMSA 1978;  
6 [~~"good faith" Section 55-3-103 NMSA~~  
7 ~~1978;~~]  
8 "holder in due Section 55-3-302 NMSA 1978;  
9 course"  
10 "instrument" Section 55-3-104 NMSA 1978;  
11 "notice of dishonor" Section 55-3-503 NMSA 1978;  
12 "order" Section 55-3-103 NMSA 1978;  
13 "ordinary care" Section 55-3-103 NMSA 1978;  
14 "person entitled Section 55-3-301 NMSA 1978;  
15 to enforce"  
16 "presentment" Section 55-3-501 NMSA 1978;  
17 "promise" Section 55-3-103 NMSA 1978;  
18 "prove" Section 55-3-103 NMSA 1978;  
19 "teller's check" Section 55-3-104 NMSA 1978;  
20 and  
21 "unauthorized  
22 signature" Section 55-3-403 NMSA 1978.  
23 (d) In addition, Chapter 55, Article 1 NMSA 1978  
24 contains general definitions and principles of construction and  
25 interpretation applicable throughout this article."

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1           Section 47. Section 55-4-210 NMSA 1978 (being Laws 1961,  
2 Chapter 96, Section 4-208, as amended) is amended to read:

3           "55-4-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS,  
4 ACCOMPANYING DOCUMENTS AND PROCEEDS.--

5           (a) A collecting bank has a security interest in an  
6 item and any accompanying documents or the proceeds of either:

7                   (1) in the case of an item deposited in an  
8 account, to the extent to which credit given for the item has  
9 been withdrawn or applied;

10                   (2) in the case of an item for which it has  
11 given credit available for withdrawal as of right, to the  
12 extent of the credit given, whether or not the credit is drawn  
13 upon or there is a right of charge-back; or

14                   (3) if it makes an advance on or against the  
15 item.

16           (b) If credit given for several items received at  
17 one time or pursuant to a single agreement is withdrawn or  
18 applied in part, the security interest remains upon all the  
19 items, any accompanying documents or the proceeds of either.  
20 For the purpose of this section, credits first given are first  
21 withdrawn.

22           (c) Receipt by a collecting bank of a final  
23 settlement for an item is a realization on its security  
24 interest in the item, accompanying documents and proceeds. So  
25 long as the bank does not receive final settlement for the item

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1 or give up possession of the item or possession or control of  
2 the accompanying documents for purposes other than collection,  
3 the security interest continues to that extent and is subject  
4 to Chapter 55, Article 9 NMSA 1978, but:

5 (1) no security agreement is necessary to make  
6 the security interest enforceable (Subparagraph (A) of  
7 Paragraph (3) of Subsection (b) of Section 55-9-203 NMSA 1978);

8 (2) no filing is required to perfect the  
9 security interest; and

10 (3) the security interest has priority over  
11 conflicting perfected security interests in the item,  
12 accompanying documents or proceeds."

13 Section 48. Section 55-4A-105 NMSA 1978 (being Laws 1992,  
14 Chapter 114, Section 201) is amended to read:

15 "55-4A-105. OTHER DEFINITIONS.--

16 (a) In this article:

17 (1) "authorized account" means a deposit  
18 account of a customer in a bank designated by the customer as a  
19 source of payment of payment orders issued by the customer to  
20 the bank; if a customer does not so designate an account, any  
21 account of the customer is an authorized account if payment of  
22 a payment order from that account is not inconsistent with a  
23 restriction on the use of that account;

24 (2) "bank" means a person engaged in the  
25 business of banking and includes a savings bank, savings and

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1 loan association, credit union and trust company; a branch or  
2 separate office of a bank is a separate bank for purposes of  
3 this article;

4 (3) "customer" means a person, including a  
5 bank, having an account with a bank or from whom a bank has  
6 agreed to receive payment orders;

7 (4) "funds-transfer business day" of a  
8 receiving bank means the part of a day during which the  
9 receiving bank is open for the receipt, processing and  
10 transmittal of payment orders and cancellations and amendments  
11 of payment orders;

12 (5) "funds-transfer system" means a wire  
13 transfer network, automated clearinghouse or other  
14 communication system of a clearinghouse or other association of  
15 banks through which a payment order by a bank may be  
16 transmitted to the bank to which the order is addressed;

17 (6) [~~"good faith" means honesty in fact and~~  
18 ~~the observance of reasonable commercial standards of fair~~  
19 ~~dealing~~] [Reserved]; and

20 (7) "prove" with respect to a fact means to  
21 meet the burden of establishing the fact (~~[Subsection (8)]~~  
22 Paragraph (8) of Subsection (b) of Section 55-1-201 NMSA 1978).

23 (b) Other definitions applying to this article and  
24 the sections in which they appear are:

25 "acceptance" Section 55-4A-209 NMSA 1978;

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1 "beneficiary" Section 55-4A-103 NMSA 1978;  
2 "beneficiary's bank" Section 55-4A-103 NMSA 1978;  
3 "executed" Section 55-4A-301 NMSA 1978;  
4 "execution date" Section 55-4A-301 NMSA 1978;  
5 "funds transfer" Section 55-4A-104 NMSA 1978;  
6 "funds-transfer system  
7 rule" Section 55-4A-501 NMSA 1978;  
8 "intermediary bank" Section 55-4A-104 NMSA 1978;  
9 "originator" Section 55-4A-104 NMSA 1978;  
10 "originator's bank" Section 55-4A-104 NMSA 1978;  
11 "payment by beneficiary's  
12 bank to beneficiary" Section 55-4A-405 NMSA 1978;  
13 "payment by originator to  
14 beneficiary" Section 55-4A-406 NMSA 1978;  
15 "payment by sender to receiving  
16 bank" Section 55-4A-403 NMSA 1978;  
17 "payment date" Section 55-4A-401 NMSA 1978;  
18 "payment order" Section 55-4A-103 NMSA 1978;  
19 "receiving bank" Section 55-4A-103 NMSA 1978;  
20 "security procedure" Section 55-4A-201 NMSA 1978;  
21 and  
22 "sender" Section 55-4A-103 NMSA 1978.

23 (c) The following definitions in Chapter 55,  
24 Article 4 NMSA 1978 apply to this article:

25 "clearinghouse" Section 55-4-104 NMSA 1978;

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1 "item" Section 55-4-104 NMSA 1978;

2

3 and

4 "Suspends payments" Section 55-4-104 NMSA 1978.

5 (d) In addition, Chapter 55, Article 1 NMSA 1978  
6 contains general definitions and principles of construction and  
7 interpretation applicable throughout this article."

8 Section 49. Section 55-4A-106 NMSA 1978 (being Laws 1992,  
9 Chapter 114, Section 202) is amended to read:

10 "55-4A-106. TIME PAYMENT ORDER IS RECEIVED.--

11 (a) The time of receipt of a payment order or  
12 communication [~~cancelling~~] canceling or amending a payment  
13 order is determined by the rules applicable to receipt of a  
14 notice stated in [~~Subsection (27) of Section 55-1-201~~] Section  
15 55-1-202 NMSA 1978. A receiving bank may fix a cut-off time or  
16 times on a funds-transfer business day for the receipt and  
17 processing of payment orders and communications [~~cancelling~~]  
18 canceling or amending payment orders. Different cut-off times  
19 may apply to payment orders, cancellations or amendments. A  
20 cut-off time may apply to senders generally or different  
21 cut-off times may apply to different senders or categories of  
22 payment orders. If a payment order or communication canceling  
23 or amending a payment order is received after the close of a  
24 funds-transfer business day or after the appropriate cut-off  
25 time on a funds-transfer business day, the receiving bank may

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1 treat the payment order or communication as received at the  
2 opening of the next funds-transfer business day.

3 (b) If this article refers to an execution date or  
4 payment date or states a day on which a receiving bank is  
5 required to take action, and the date or day does not fall on a  
6 funds-transfer business day, the next day that is a  
7 funds-transfer business day is treated as the date or day  
8 stated, unless the contrary is stated in this article."

9 Section 50. Section 55-4A-204 NMSA 1978 (being Laws 1992,  
10 Chapter 114, Section 208) is amended to read:

11 "55-4A-204. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO  
12 REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER.--

13 (a) If a receiving bank accepts a payment order  
14 issued in the name of its customer as sender [~~which~~] that is:  
15 (i) not authorized and not effective as the order of the  
16 customer under Section 55-4A-202 NMSA 1978; or (ii) not  
17 enforceable, in whole or in part, against the customer under  
18 Section 55-4A-203 NMSA 1978, the bank shall refund any payment  
19 of the payment order received from the customer to the extent  
20 the bank is not entitled to enforce payment and shall pay  
21 interest on the refundable amount calculated from the date the  
22 bank received payment to the date of the refund. However, the  
23 customer is not entitled to interest from the bank on the  
24 amount to be refunded if the customer fails to exercise  
25 ordinary care to determine that the order was not authorized by

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1 the customer and to notify the bank of the relevant facts  
2 within a reasonable time not exceeding ninety days after the  
3 date the customer received notification from the bank that the  
4 order was accepted or that the customer's account was debited  
5 with respect to the order. The bank is not entitled to any  
6 recovery from the customer on account of a failure by the  
7 customer to give notification as stated in this section.

8 (b) Reasonable time under Subsection (a) of this  
9 section may be fixed by agreement as stated in [~~Subsection (1)~~]  
10 [~~of Section 55-1-204~~] Subsection (b) of Section 55-1-302 NMSA  
11 1978, but the obligation of a receiving bank to refund payment  
12 as stated in Subsection (a) of this section may not otherwise  
13 be varied by agreement."

14 Section 51. Section 55-5-103 NMSA 1978 (being Laws 1997,  
15 Chapter 75, Section 5) is amended to read:

16 "55-5-103. SCOPE.--

17 (a) This article applies to letters of credit and  
18 to certain rights and obligations arising out of transactions  
19 involving letters of credit.

20 (b) The statement of a rule in this article does  
21 not by itself require, imply or negate application of the same  
22 or a different rule to a situation not provided for, or to a  
23 person not specified, in this article.

24 (c) With the exception of this subsection,  
25 Subsections (a) and (d) of this section, [~~Sections~~

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1 ~~55-5-102(a)(9) and (10)]~~ Paragraphs (9) and (10) of Subsection  
2 (a) of Section 55-5-102 NMSA 1978, [~~Section 55-5-106(d)]~~  
3 Subsection (d) of Section 55-5-106 NMSA 1978 and [~~Section~~  
4 ~~55-5-114(d)]~~ Subsection (d) of Section 55-5-114 NMSA 1978, and  
5 except to the extent prohibited in [~~Section 55-1-102(3)]~~  
6 Section 55-1-302 NMSA 1978 and [~~Section 55-5-117(d)]~~ Subsection  
7 (d) of Section 55-5-117 NMSA 1978, the effect of this article  
8 may be varied by agreement or by a provision stated or  
9 incorporated by reference in an undertaking. A term in an  
10 agreement or undertaking generally excusing liability or  
11 generally limiting remedies for failure to perform obligations  
12 is not sufficient to vary obligations prescribed by this  
13 article.

14 (d) Rights and obligations of an issuer to a  
15 beneficiary or a nominated person under a letter of credit are  
16 independent of the existence, performance or nonperformance of  
17 a contract or arrangement out of which the letter of credit  
18 arises or which underlies it, including contracts or  
19 arrangements between the issuer and the applicant and between  
20 the applicant and the beneficiary."

## 21 ARTICLE 7

### 22 DOCUMENTS OF TITLE

23 Section 52. Section 55-7-102 NMSA 1978 (being Laws 1961,  
24 Chapter 96, Section 7-102) is repealed and a new Section  
25 55-7-102 NMSA 1978 is enacted to read:

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1 "55-7-102. [NEW MATERIAL] DEFINITIONS AND INDEX OF  
2 DEFINITIONS.--

3 (a) In Chapter 55, Article 7 NMSA 1978, unless the  
4 context otherwise requires:

5 (1) "bailee" means a person that by a  
6 warehouse receipt, bill of lading or other document of title  
7 acknowledges possession of goods and contracts to deliver them;

8 (2) "carrier" means a person that issues a  
9 bill of lading;

10 (3) "consignee" means a person named in a bill  
11 of lading to which or to whose order the bill promises  
12 delivery;

13 (4) "consignor" means a person named in a bill  
14 of lading as the person from which the goods have been received  
15 for shipment;

16 (5) "delivery order" means a record that  
17 contains an order to deliver goods directed to a warehouse,  
18 carrier or other person that in the ordinary course of business  
19 issues warehouse receipts or bills of lading;

20 (6) Reserved;

21 (7) "goods" means all things that are treated  
22 as movable for the purposes of a contract for storage or  
23 transportation;

24 (8) "issuer" means a bailee that issues a  
25 document of title or, in the case of an unaccepted delivery

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1 order, the person that orders the possessor of goods to  
2 deliver. The term includes a person for which an agent or  
3 employee purports to act in issuing a document if the agent or  
4 employee has real or apparent authority to issue documents,  
5 even if the issuer did not receive any goods, the goods were  
6 misdescribed or in any other respect the agent or employee  
7 violated the issuer's instructions;

8 (9) "person entitled under the document" means  
9 the holder, in the case of a negotiable document of title, or  
10 the person to which delivery of the goods is to be made by the  
11 terms of, or pursuant to instructions in a record under, a  
12 nonnegotiable document of title;

13 (10) Reserved;

14 (11) "sign" means, with present intent to  
15 authenticate or adopt a record:

16 (A) to execute or adopt a tangible  
17 symbol; or

18 (B) to attach to or logically associate  
19 with the record an electronic sound, symbol or process;

20 (12) "shipper" means a person that enters into  
21 a contract of transportation with a carrier; and

22 (13) "warehouse" means a person engaged in the  
23 business of storing goods for hire.

24 (b) Definitions in other articles applying to this  
25 article and the sections in which they appear are:

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1 (1) "contract for sale", Section 55-2-106 NMSA  
2 1978;

3 (2) "lessee in the ordinary course of  
4 business", Section 55-2A-103 NMSA 1978; and

5 (3) "receipt" of goods, Section 55-2-103 NMSA  
6 1978.

7 (c) In addition, Chapter 55, Article 1 NMSA 1978  
8 contains general definitions and principles of construction and  
9 interpretation applicable throughout this article."

10 Section 53. Section 55-7-103 NMSA 1978 (being Laws 1961,  
11 Chapter 96, Section 7-103) is repealed and a new Section  
12 55-7-103 NMSA 1978 is enacted to read:

13 "55-7-103. [NEW MATERIAL] RELATION OF ARTICLE TO TREATY  
14 OR STATUTE.--

15 (a) Chapter 55, Article 7 NMSA 1978 7is subject to  
16 any treaty or statute of the United States or regulatory  
17 statute of this state to the extent the treaty, statute or  
18 regulatory statute is applicable.

19 (b) Chapter 55, Article 7 NMSA 1978 does not modify  
20 or repeal any law prescribing the form or content of a document  
21 of title or the services or facilities to be afforded by a  
22 bailee, or otherwise regulating a bailee's business in respects  
23 not specifically treated in this article. However, violation  
24 of such a law does not affect the status of a document of title  
25 that otherwise is within the definition of a document of title.

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1 (c) This Uniform Commercial Code modifies, limits  
2 and supersedes the federal Electronic Signatures in Global and  
3 National Commerce Act (15 U.S.C. Section 7001, et. seq.) but  
4 does not modify, limit or supersede Section 101(c) of that act  
5 (15 U.S.C. Section 7001(c)) or authorize electronic delivery of  
6 any of the notices described in Section 103(b) of that act (15  
7 U.S.C. Section 7003(b)).

8 (d) To the extent there is a conflict between the  
9 Uniform Electronic Transactions Act and Chapter 55, Article 7  
10 NMSA 1978, Chapter 55, Article 7 NMSA 1978 governs."

11 Section 54. Section 55-7-104 NMSA 1978 (being Laws 1961,  
12 Chapter 96, Section 7-104) is repealed and a new Section  
13 55-7-104 NMSA 1978 is enacted to read:

14 "55-7-104. [NEW MATERIAL] NEGOTIABLE AND NONNEGOTIABLE  
15 DOCUMENT OF TITLE.--

16 (a) Except as otherwise provided in Subsection (c)  
17 of this section, a document of title is negotiable if by its  
18 terms the goods are to be delivered to bearer or to the order  
19 of a named person.

20 (b) A document of title other than one described in  
21 Subsection (a) of this section is nonnegotiable. A bill of  
22 lading that states that the goods are consigned to a named  
23 person is not made negotiable by a provision that the goods are  
24 to be delivered only against an order in a record signed by the  
25 same or another named person.

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1 (c) A document of title is nonnegotiable if, at the  
2 time it is issued, the document has a conspicuous legend,  
3 however expressed, that it is nonnegotiable."

4 Section 55. Section 55-7-105 NMSA 1978 (being Laws 1961,  
5 Chapter 96, Section 7-105) is repealed and a new Section  
6 55-7-105 NMSA 1978 is enacted to read:

7 "55-7-105. [NEW MATERIAL] REISSUANCE IN ALTERNATIVE  
8 MEDIUM.--

9 (a) Upon request of a person entitled under an  
10 electronic document of title, the issuer of the electronic  
11 document may issue a tangible document of title as a substitute  
12 for the electronic document if:

13 (1) the person entitled under the electronic  
14 document surrenders control of the document to the issuer; and

15 (2) the tangible document when issued contains  
16 a statement that it is issued in substitution for the  
17 electronic document.

18 (b) Upon issuance of a tangible document of title  
19 in substitution for an electronic document of title in  
20 accordance with Subsection (a) of this section:

21 (1) the electronic document ceases to have any  
22 effect or validity; and

23 (2) the person that procured issuance of the  
24 tangible document warrants to all subsequent persons entitled  
25 under the tangible document that the warrantor was a person

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1 entitled under the electronic document when the warrantor  
2 surrendered control of the electronic document to the issuer.

3 (c) Upon request of a person entitled under a  
4 tangible document of title, the issuer of the tangible document  
5 may issue an electronic document of title as a substitute for  
6 the tangible document if:

7 (1) the person entitled under the tangible  
8 document surrenders possession of the document to the issuer;  
9 and

10 (2) the electronic document when issued  
11 contains a statement that it is issued in substitution for the  
12 tangible document.

13 (d) Upon issuance of an electronic document of  
14 title in substitution for a tangible document of title in  
15 accordance with Subsection (c) of this section:

16 (1) the tangible document ceases to have any  
17 effect or validity; and

18 (2) the person that procured issuance of the  
19 electronic document warrants to all subsequent persons entitled  
20 under the electronic document that the warrantor was a person  
21 entitled under the tangible document when the warrantor  
22 surrendered possession of the tangible document to the issuer."

23 Section 56. A new Section 55-7-106 NMSA 1978 is enacted  
24 to read:

25 "55-7-106. [NEW MATERIAL] CONTROL OF ELECTRONIC DOCUMENT

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1 OF TITLE.--

2 (a) A person has control of an electronic document  
3 of title if a system employed for evidencing the transfer of  
4 interests in the electronic document reliably establishes that  
5 person as the person to which the electronic document was  
6 issued or transferred.

7 (b) A system satisfies Subsection (a) of this  
8 section, and a person is deemed to have control of an  
9 electronic document of title, if the document is created,  
10 stored and assigned in such a manner that:

11 (1) a single authoritative copy of the  
12 document exists that is unique, identifiable and, except as  
13 otherwise provided in Paragraphs (4), (5) and (6) of this  
14 subsection, unalterable;

15 (2) the authoritative copy identifies the  
16 person asserting control as:

17 (A) the person to which the document was  
18 issued; or

19 (B) if the authoritative copy indicates  
20 that the document has been transferred, the person to which the  
21 document was most recently transferred;

22 (3) the authoritative copy is communicated to  
23 and maintained by the person asserting control or its  
24 designated custodian;

25 (4) copies or amendments that add or change an

1 identified assignee of the authoritative copy can be made only  
2 with the consent of the person asserting control;

3 (5) each copy of the authoritative copy and  
4 any copy of a copy is readily identifiable as a copy that is  
5 not the authoritative copy; and

6 (6) any amendment of the authoritative copy is  
7 readily identifiable as authorized or unauthorized."

8 PART 2

9 WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

10 Section 57. Section 55-7-201 NMSA 1978 (being Laws 1961,  
11 Chapter 96, Section 7-201) is repealed and a new Section  
12 55-7-201 NMSA 1978 is enacted to read:

13 "55-7-201. [NEW MATERIAL] PERSON THAT MAY ISSUE A  
14 WAREHOUSE RECEIPT--STORAGE UNDER BOND.--

15 (a) A warehouse receipt may be issued by any  
16 warehouse.

17 (b) If goods, including distilled spirits and  
18 agricultural commodities, are stored under a statute requiring  
19 a bond against withdrawal or a license for the issuance of  
20 receipts in the nature of warehouse receipts, a receipt issued  
21 for the goods is deemed to be a warehouse receipt even if  
22 issued by a person that is the owner of the goods and is not a  
23 warehouse."

24 Section 58. Section 55-7-202 NMSA 1978 (being Laws 1961,  
25 Chapter 96, Section 7-202) is repealed and a new Section

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1 55-7-202 NMSA 1978 is enacted to read:

2 "55-7-202. [NEW MATERIAL] FORM OF WAREHOUSE RECEIPT--  
3 EFFECT OF OMISSION.--

4 (a) A warehouse receipt need not be in any  
5 particular form.

6 (b) Unless a warehouse receipt provides for each of  
7 the following, the warehouse is liable for damages caused to a  
8 person injured by its omission:

9 (1) a statement of the location of the  
10 warehouse facility where the goods are stored;

11 (2) the date of issue of the receipt;

12 (3) the unique identification code of the  
13 receipt;

14 (4) a statement whether the goods received  
15 will be delivered to the bearer, to a named person or to a  
16 named person or its order;

17 (5) the rate of storage and handling charges,  
18 unless goods are stored under a field warehousing arrangement,  
19 in which case a statement of that fact is sufficient on a  
20 nonnegotiable receipt;

21 (6) a description of the goods or the packages  
22 containing them;

23 (7) the signature of the warehouse or its  
24 agent;

25 (8) if the receipt is issued for goods that

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1 the warehouse owns, either solely, jointly or in common with  
2 others, a statement of the fact of that ownership; and

3 (9) a statement of the amount of advances made  
4 and of liabilities incurred for which the warehouse claims a  
5 lien or security interest, unless the precise amount of  
6 advances made or liabilities incurred, at the time of the issue  
7 of the receipt, is unknown to the warehouse or to its agent  
8 that issued the receipt, in which case a statement of the fact  
9 that advances have been made or liabilities incurred and the  
10 purpose of the advances or liabilities is sufficient.

11 (c) A warehouse may insert in its receipt any terms  
12 that are not contrary to the Uniform Commercial Code and do not  
13 impair its obligation of delivery under Section 55-7-403 NMSA  
14 1978 or its duty of care under Section 55-7-204 NMSA 1978. Any  
15 contrary provision is ineffective."

16 Section 59. Section 55-7-203 NMSA 1978 (being Laws 1961,  
17 Chapter 96, Section 7-203) is repealed and a new Section  
18 55-7-203 NMSA 1978 is enacted to read:

19 "55-7-203. [NEW MATERIAL] LIABILITY FOR NONRECEIPT OR  
20 MISDESCRIPTION.--A party to or purchaser for value in good  
21 faith of a document of title, other than a bill of lading, that  
22 relies upon the description of the goods in the document may  
23 recover from the issuer damages caused by the nonreceipt or  
24 misdescription of the goods, except to the extent that:

25 (1) the document conspicuously indicates that the

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1 issuer does not know whether all or part of the goods in fact  
2 were received or conform to the description, such as a case in  
3 which the description is in terms of marks or labels or kind,  
4 quantity or condition or the receipt or description is  
5 qualified by "contents, condition, and quality unknown", "said  
6 to contain" or words of similar import, if the indication is  
7 true; or

8 (2) the party or purchaser otherwise has notice of  
9 the nonreceipt or misdescription."

10 Section 60. Section 55-7-204 NMSA 1978 (being Laws 1961,  
11 Chapter 96, Section 7-204) is repealed and a new Section  
12 55-7-204 NMSA 1978 is enacted to read:

13 "55-7-204. [NEW MATERIAL] DUTY OF CARE--CONTRACTUAL  
14 LIMITATION OF WAREHOUSE'S LIABILITY.--

15 (a) A warehouse is liable for damages for loss of  
16 or injury to the goods caused by its failure to exercise care  
17 with regard to the goods that a reasonably careful person would  
18 exercise under similar circumstances. Unless otherwise agreed,  
19 the warehouse is not liable for damages that could not have  
20 been avoided by the exercise of that care.

21 (b) Damages may be limited by a term in the  
22 warehouse receipt or storage agreement limiting the amount of  
23 liability in case of loss or damage beyond which the warehouse  
24 is not liable. Such a limitation is not effective with respect  
25 to the warehouse's liability for conversion to its own use. On

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1 request of the bailor in a record at the time of signing the  
2 storage agreement or within a reasonable time after receipt of  
3 the warehouse receipt, the warehouse's liability may be  
4 increased on part or all of the goods covered by the storage  
5 agreement or the warehouse receipt. In this event, increased  
6 rates may be charged based on an increased valuation of the  
7 goods.

8 (c) Reasonable provisions as to the time and manner  
9 of presenting claims and commencing actions based on the  
10 bailment may be included in the warehouse receipt or storage  
11 agreement."

12 Section 61. Section 55-7-205 NMSA 1978 (being Laws 1961,  
13 Chapter 96, Section 7-205) is repealed and a new Section  
14 55-7-205 NMSA 1978 is enacted to read:

15 "55-7-205. [NEW MATERIAL] TITLE UNDER WAREHOUSE RECEIPT  
16 DEFEATED IN CERTAIN CASES.--A buyer in ordinary course of  
17 business of fungible goods sold and delivered by a warehouse  
18 that is also in the business of buying and selling such goods  
19 takes the goods free of any claim under a warehouse receipt  
20 even if the receipt is negotiable and has been duly  
21 negotiated."

22 Section 62. Section 55-7-206 NMSA 1978 (being Laws 1961,  
23 Chapter 96, Section 7-206) is repealed and a new Section  
24 55-7-206 NMSA 1978 is enacted to read:

25 "55-7-206. [NEW MATERIAL] TERMINATION OF STORAGE AT  
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1 WAREHOUSE'S OPTION.--

2 (a) A warehouse, by giving notice to the person on  
3 whose account the goods are held and any other person known to  
4 claim an interest in the goods, may require payment of any  
5 charges and removal of the goods from the warehouse at the  
6 termination of the period of storage fixed by the document of  
7 title or, if a period is not fixed, within a stated period not  
8 less than thirty days after the warehouse gives notice. If the  
9 goods are not removed before the date specified in the notice,  
10 the warehouse may sell them pursuant to Section 55-7-210 NMSA  
11 1978.

12 (b) If a warehouse in good faith believes that  
13 goods are about to deteriorate or decline in value to less than  
14 the amount of its lien within the time provided in Subsection  
15 (a) of this section and Section 55-7-210 NMSA 1978, the  
16 warehouse may specify in the notice given under Subsection (a)  
17 of this section any reasonable shorter time for removal of the  
18 goods and, if the goods are not removed, may sell them at  
19 public sale held not less than one week after a single  
20 advertisement or posting.

21 (c) If, as a result of a quality or condition of  
22 the goods of which the warehouse did not have notice at the  
23 time of deposit, the goods are a hazard to other property, the  
24 warehouse facilities or other persons, the warehouse may sell  
25 the goods at public or private sale without advertisement or

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1 posting on reasonable notification to all persons known to  
2 claim an interest in the goods. If the warehouse, after a  
3 reasonable effort, is unable to sell the goods, it may dispose  
4 of them in any lawful manner and does not incur liability by  
5 reason of that disposition.

6 (d) A warehouse shall deliver the goods to any  
7 person entitled to them under Chapter 55, Article 7 NMSA 1978  
8 upon due demand made at any time before sale or other  
9 disposition under this section.

10 (e) A warehouse may satisfy its lien from the  
11 proceeds of any sale or disposition under this section but  
12 shall hold the balance for delivery on the demand of any person  
13 to which the warehouse would have been bound to deliver the  
14 goods."

15 Section 63. Section 55-7-207 NMSA 1978 (being Laws 1961,  
16 Chapter 96, Section 7-207) is repealed and a new Section  
17 55-7-207 NMSA 1978 is enacted to read:

18 "55-7-207. [NEW MATERIAL] GOODS MUST BE KEPT SEPARATE--  
19 FUNGIBLE GOODS.--

20 (a) Unless the warehouse receipt provides  
21 otherwise, a warehouse shall keep separate the goods covered by  
22 each receipt so as to permit at all times identification and  
23 delivery of those goods. However, different lots of fungible  
24 goods may be commingled.

25 (b) If different lots of fungible goods are

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1 commingled, the goods are owned in common by the persons  
2 entitled thereto and the warehouse is severally liable to each  
3 owner for that owner's share. If, because of overissue, a mass  
4 of fungible goods is insufficient to meet all the receipts the  
5 warehouse has issued against it, the persons entitled include  
6 all holders to which overissued receipts have been duly  
7 negotiated."

8 Section 64. Section 55-7-208 NMSA 1978 (being Laws 1961,  
9 Chapter 96, Section 7-208) is repealed and a new Section  
10 55-7-208 NMSA 1978 is enacted to read:

11 "55-7-208. [NEW MATERIAL] ALTERED WAREHOUSE RECEIPTS.--If  
12 a blank in a negotiable tangible warehouse receipt has been  
13 filled in without authority, a good-faith purchaser for value  
14 and without notice of the lack of authority may treat the  
15 insertion as authorized. Any other unauthorized alteration  
16 leaves any tangible or electronic warehouse receipt enforceable  
17 against the issuer according to its original tenor."

18 Section 65. Section 55-7-209 NMSA 1978 (being Laws 1961,  
19 Chapter 96, Section 7-209) is repealed and a new Section  
20 55-7-209 NMSA 1978 is enacted to read:

21 "55-7-209. [NEW MATERIAL] LIEN OF WAREHOUSE.--

22 (a) A warehouse has a lien against the bailor on  
23 the goods covered by a warehouse receipt or storage agreement  
24 or on the proceeds thereof in its possession for charges for  
25 storage or transportation, including demurrage and terminal

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1 charges, insurance, labor or other charges, present or future,  
2 in relation to the goods, and for expenses necessary for  
3 preservation of the goods or reasonably incurred in their sale  
4 pursuant to law. If the person on whose account the goods are  
5 held is liable for similar charges or expenses in relation to  
6 other goods whenever deposited and it is stated in the  
7 warehouse receipt or storage agreement that a lien is claimed  
8 for charges and expenses in relation to other goods, the  
9 warehouse also has a lien against the goods covered by the  
10 warehouse receipt or storage agreement or on the proceeds  
11 thereof in its possession for those charges and expenses,  
12 whether or not the other goods have been delivered by the  
13 warehouse. However, as against a person to which a negotiable  
14 warehouse receipt is duly negotiated, a warehouse's lien is  
15 limited to charges in an amount or at a rate specified in the  
16 warehouse receipt or, if no charges are so specified, to a  
17 reasonable charge for storage of the specific goods covered by  
18 the receipt subsequent to the date of the receipt.

19 (b) A warehouse may also reserve a security  
20 interest against the bailor for the maximum amount specified on  
21 the receipt for charges other than those specified in  
22 Subsection (a) of this section, such as for money advanced and  
23 interest. The security interest is governed by Chapter 55,  
24 Article 9 NMSA 1978.

25 (c) A warehouse's lien for charges and expenses

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1 under Subsection (a) of this section or a security interest  
2 under Subsection (b) of this section is also effective against  
3 any person that so entrusted the bailor with possession of the  
4 goods that a pledge of them by the bailor to a good-faith  
5 purchaser for value would have been valid. However, the lien  
6 or security interest is not effective against a person that  
7 before issuance of a document of title had a legal interest or  
8 a perfected security interest in the goods and that did not:

9 (1) deliver or entrust the goods or any  
10 document of title covering the goods to the bailor or the  
11 bailor's nominee with:

12 (A) actual or apparent authority to  
13 ship, store or sell;

14 (B) power to obtain delivery under  
15 Section 55-7-403 NMSA 1978; or

16 (C) power of disposition under Section  
17 55-2-403, Subsection (2) of Section 55-2A-304, Subsection (2)  
18 of Section 55-2A-305, Section 55-9-320 or Subsection (c) of  
19 Section 55-9-321 NMSA 1978, or other statute or rule of law; or

20 (2) acquiesce in the procurement by the bailor  
21 or its nominee of any document.

22 (d) A warehouse's lien on household goods for  
23 charges and expenses in relation to the goods under Subsection  
24 (a) of this section is also effective against all persons if  
25 the depositor was the legal possessor of the goods at the time

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1 of deposit. In this subsection, "household goods" means  
2 furniture, furnishings or personal effects used by the  
3 depositor in a dwelling.

4 (e) A warehouse loses its lien on any goods that it  
5 voluntarily delivers or unjustifiably refuses to deliver."

6 Section 66. Section 55-7-210 NMSA 1978 (being Laws 1961,  
7 Chapter 96, Section 7-210, as amended) is repealed and a new  
8 Section 55-7-210 NMSA 1978 is enacted to read:

9 "55-7-210. [NEW MATERIAL] ENFORCEMENT OF WAREHOUSE'S  
10 LIEN.--

11 (a) Except as otherwise provided in Subsection (b)  
12 of this section, a warehouse's lien may be enforced by public  
13 or private sale of the goods, in bulk or in packages, at any  
14 time or place and on any terms that are commercially  
15 reasonable, after notifying all persons known to claim an  
16 interest in the goods. The notification must include a  
17 statement of the amount due, the nature of the proposed sale  
18 and the time and place of any public sale. The fact that a  
19 better price could have been obtained by a sale at a different  
20 time or in a method different from that selected by the  
21 warehouse is not of itself sufficient to establish that the  
22 sale was not made in a commercially reasonable manner. The  
23 warehouse sells in a commercially reasonable manner if the  
24 warehouse sells the goods in the usual manner in any recognized  
25 market therefor, sells at the price current in that market at

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1 the time of the sale or otherwise sells in conformity with  
2 commercially reasonable practices among dealers in the type of  
3 goods sold. A sale of more goods than apparently necessary to  
4 be offered to ensure satisfaction of the obligation is not  
5 commercially reasonable, except in cases covered by the  
6 preceding sentence.

7 (b) A warehouse may enforce its lien on goods,  
8 other than goods stored by a merchant in the course of its  
9 business, only if the following requirements are satisfied:

10 (1) all persons known to claim an interest in  
11 the goods must be notified;

12 (2) the notification must include an itemized  
13 statement of the claim, a description of the goods subject to  
14 the lien, a demand for payment within a specified time not less  
15 than ten days after receipt of the notification and a  
16 conspicuous statement that, unless the claim is paid within  
17 that time, the goods will be advertised for sale and sold by  
18 auction at a specified time and place;

19 (3) the sale must conform to the terms of the  
20 notification;

21 (4) the sale must be held at the nearest  
22 suitable place to where the goods are held or stored; and

23 (5) after the expiration of the time given in  
24 the notification, an advertisement of the sale must be  
25 published once a week for two weeks consecutively in a

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1 newspaper of general circulation where the sale is to be held.  
2 The advertisement must include a description of the goods, the  
3 name of the person on whose account the goods are being held  
4 and the time and place of the sale. The sale must take place  
5 at least fifteen days after the first publication. If there is  
6 no newspaper of general circulation where the sale is to be  
7 held, the advertisement must be posted at least ten days before  
8 the sale in not fewer than six conspicuous places in the  
9 neighborhood of the proposed sale.

10 (c) Before any sale pursuant to this section, any  
11 person claiming a right in the goods may pay the amount  
12 necessary to satisfy the lien and the reasonable expenses  
13 incurred in complying with this section. In that event, the  
14 goods may not be sold but must be retained by the warehouse  
15 subject to the terms of the receipt and Chapter 55, Article 7  
16 NMSA 1978.

17 (d) A warehouse may buy at any public sale held  
18 pursuant to this section.

19 (e) A purchaser in good faith of goods sold to  
20 enforce a warehouse's lien takes the goods free of any rights  
21 of persons against which the lien was valid, despite the  
22 warehouse's noncompliance with this section.

23 (f) A warehouse may satisfy its lien from the  
24 proceeds of any sale pursuant to this section but shall hold  
25 the balance, if any, for delivery on demand to any person to

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1 which the warehouse would have been bound to deliver the goods.

2 (g) The rights provided by this section are in  
3 addition to all other rights allowed by law to a creditor  
4 against a debtor.

5 (h) If a lien is on goods stored by a merchant in  
6 the course of its business, the lien may be enforced in  
7 accordance with Subsection (a) or (b) of this section.

8 (i) A warehouse is liable for damages caused by  
9 failure to comply with the requirements for sale under this  
10 section and, in case of willful violation, is liable for  
11 conversion."

12 PART 3

13 BILLS OF LADING: SPECIAL PROVISIONS

14 Section 67. Section 55-7-301 NMSA 1978 (being Laws 1961,  
15 Chapter 96, Section 7-301) is repealed and a new Section  
16 55-7-301 NMSA 1978 is enacted to read:

17 "55-7-301. [NEW MATERIAL] LIABILITY FOR NONRECEIPT OR  
18 MISDESCRIPTION--"SAID TO CONTAIN"--"SHIPPER'S WEIGHT, LOAD AND  
19 COUNT"--IMPROPER HANDLING.--

20 (a) A consignee of a nonnegotiable bill of lading  
21 that has given value in good faith, or a holder to which a  
22 negotiable bill has been duly negotiated, relying upon the  
23 description of the goods in the bill or upon the date shown in  
24 the bill, may recover from the issuer damages caused by the  
25 misdating of the bill or the nonreceipt or misdescription of

1 the goods, except to the extent that the bill indicates that  
2 the issuer does not know whether any part or all of the goods  
3 in fact were received or conform to the description, such as in  
4 a case in which the description is in terms of marks or labels  
5 or kind, quantity or condition or the receipt or description is  
6 qualified by "contents or condition of contents of packages  
7 unknown", "said to contain", "shipper's weight, load and count"  
8 or words of similar import, if that indication is true.

9 (b) If goods are loaded by the issuer of a bill of  
10 lading:

11 (1) the issuer shall count the packages of  
12 goods if shipped in packages and shall ascertain the kind and  
13 quantity if shipped in bulk; and

14 (2) words such as "shipper's weight, load and  
15 count" or words of similar import indicating that the  
16 description was made by the shipper are ineffective except as  
17 to goods concealed in packages.

18 (c) If bulk goods are loaded by a shipper that  
19 makes available to the issuer of a bill of lading adequate  
20 facilities for weighing those goods, the issuer shall ascertain  
21 the kind and quantity within a reasonable time after receiving  
22 the shipper's request in a record to do so. In that case,  
23 "shipper's weight" or words of similar import are ineffective.

24 (d) The issuer of a bill of lading, by including in  
25 the bill the words "shipper's weight, load and count", or words

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1 of similar import, may indicate that the goods were loaded by  
2 the shipper, and, if that statement is true, the issuer is not  
3 liable for damages caused by the improper loading. However,  
4 omission of such words does not imply liability for damages  
5 caused by improper loading.

6 (e) A shipper guarantees to an issuer the accuracy  
7 at the time of shipment of the description, marks, labels,  
8 number, kind, quantity, condition and weight, as furnished by  
9 the shipper, and the shipper shall indemnify the issuer against  
10 damage caused by inaccuracies in those particulars. This right  
11 of indemnity does not limit the issuer's responsibility or  
12 liability under the contract of carriage to any person other  
13 than the shipper."

14 Section 68. Section 55-7-302 NMSA 1978 (being Laws 1961,  
15 Chapter 96, Section 7-302) is repealed and a new Section  
16 55-7-302 NMSA 1978 is enacted to read:

17 "55-7-302. [NEW MATERIAL] THROUGH BILLS OF LADING AND  
18 SIMILAR DOCUMENTS OF TITLE.--

19 (a) The issuer of a through bill of lading, or  
20 other document of title embodying an undertaking to be  
21 performed in part by a person acting as its agent or by a  
22 performing carrier, is liable to any person entitled to recover  
23 on the bill or other document for any breach by the other  
24 person or the performing carrier of its obligation under the  
25 bill or other document. However, to the extent that the bill

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1 or other document covers an undertaking to be performed  
2 overseas or in territory not contiguous to the continental  
3 United States or an undertaking including matters other than  
4 transportation, this liability for breach by the other person  
5 or the performing carrier may be varied by agreement of the  
6 parties.

7 (b) If goods covered by a through bill of lading or  
8 other document of title embodying an undertaking to be  
9 performed in part by a person other than the issuer are  
10 received by that person, the person is subject, with respect to  
11 its own performance while the goods are in its possession, to  
12 the obligation of the issuer. The person's obligation is  
13 discharged by delivery of the goods to another person pursuant  
14 to the bill or other document and does not include liability  
15 for breach by any other person or by the issuer.

16 (c) The issuer of a through bill of lading or other  
17 document of title described in Subsection (a) of this section  
18 is entitled to recover from the performing carrier, or other  
19 person in possession of the goods when the breach of the  
20 obligation under the bill or other document occurred:

21 (1) the amount it may be required to pay to  
22 any person entitled to recover on the bill or other document  
23 for the breach, as may be evidenced by any receipt, judgment or  
24 transcript of judgment; and

25 (2) the amount of any expense reasonably

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1 incurred by the issuer in defending any action commenced by any  
2 person entitled to recover on the bill or other document for  
3 the breach."

4 Section 69. Section 55-7-303 NMSA 1978 (being Laws 1961,  
5 Chapter 96, Section 7-303) is repealed and a new Section  
6 55-7-303 NMSA 1978 is enacted to read:

7 "55-7-303. [NEW MATERIAL] DIVERSION--RECONSIGNMENT--  
8 CHANGE OF INSTRUCTIONS.--

9 (a) Unless the bill of lading otherwise provides, a  
10 carrier may deliver the goods to a person or destination other  
11 than that stated in the bill or may otherwise dispose of the  
12 goods, without liability for misdelivery, on instructions from:

13 (1) the holder of a negotiable bill;

14 (2) the consignor on a nonnegotiable bill,  
15 even if the consignee has given contrary instructions;

16 (3) the consignee on a nonnegotiable bill in  
17 the absence of contrary instructions from the consignor, if the  
18 goods have arrived at the billed destination or if the  
19 consignee is in possession of the tangible bill or in control  
20 of the electronic bill; or

21 (4) the consignee on a nonnegotiable bill, if  
22 the consignee is entitled as against the consignor to dispose  
23 of the goods.

24 (b) Unless instructions described in Subsection (a)  
25 of this section are included in a negotiable bill of lading, a

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1 person to which the bill is duly negotiated may hold the bailee  
2 according to the original terms."

3 Section 70. Section 55-7-304 NMSA 1978 (being Laws 1961,  
4 Chapter 96, Section 7-304) is repealed and a new Section  
5 55-7-304 NMSA 1978 is enacted to read:

6 "55-7-304. [NEW MATERIAL] TANGIBLE BILLS OF LADING IN A  
7 SET.--

8 (a) Except as customary in international  
9 transportation, a tangible bill of lading may not be issued in  
10 a set of parts. The issuer is liable for damages caused by  
11 violation of this subsection.

12 (b) If a tangible bill of lading is lawfully issued  
13 in a set of parts, each of which contains an identification  
14 code and is expressed to be valid only if the goods have not  
15 been delivered against any other part, the whole of the parts  
16 constitutes one bill.

17 (c) If a tangible negotiable bill of lading is  
18 lawfully issued in a set of parts and different parts are  
19 negotiated to different persons, the title of the holder to  
20 which the first due negotiation is made prevails as to both the  
21 document of title and the goods even if any later holder may  
22 have received the goods from the carrier in good faith and  
23 discharged the carrier's obligation by surrendering its part.

24 (d) A person that negotiates or transfers a single  
25 part of a tangible bill of lading issued in a set is liable to

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1 holders of that part as if it were the whole set.

2 (e) The bailee shall deliver in accordance with  
3 Part 4 of this article against the first presented part of a  
4 tangible bill of lading lawfully issued in a set. Delivery in  
5 this manner discharges the bailee's obligation on the whole  
6 bill."

7 Section 71. Section 55-7-305 NMSA 1978 (being Laws 1961,  
8 Chapter 96, Section 7-305) is repealed and a new Section  
9 55-7-305 NMSA 1978 is enacted to read:

10 "55-7-305. [NEW MATERIAL] DESTINATION BILLS.--

11 (a) Instead of issuing a bill of lading to the  
12 consignor at the place of shipment, a carrier, at the request  
13 of the consignor, may procure the bill to be issued at  
14 destination or at any other place designated in the request.

15 (b) Upon request of any person entitled as against  
16 a carrier to control the goods while in transit and on  
17 surrender of possession or control of any outstanding bill of  
18 lading or other receipt covering the goods, the issuer, subject  
19 to Section 55-7-105 NMSA 1978, may procure a substitute bill to  
20 be issued at any place designated in the request."

21 Section 72. Section 55-7-306 NMSA 1978 (being Laws 1961,  
22 Chapter 96, Section 7-306) is repealed and a new Section  
23 55-7-306 NMSA 1978 is enacted to read:

24 "55-7-306. [NEW MATERIAL] ALTERED BILLS OF LADING.--An  
25 unauthorized alteration or filling in of a blank in a bill of

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1 lading leaves the bill enforceable according to its original  
2 tenor."

3 Section 73. Section 55-7-307 NMSA 1978 (being Laws 1961,  
4 Chapter 96, Section 7-307) is repealed and a new Section  
5 55-7-307 NMSA 1978 is enacted to read:

6 "55-7-307. [NEW MATERIAL] LIEN OF CARRIER.--

7 (a) A carrier has a lien on the goods covered by a  
8 bill of lading or on the proceeds thereof in its possession for  
9 charges after the date of the carrier's receipt of the goods  
10 for storage or transportation, including demurrage and terminal  
11 charges, and for expenses necessary for preservation of the  
12 goods incident to their transportation or reasonably incurred  
13 in their sale pursuant to law. However, against a purchaser  
14 for value of a negotiable bill of lading, a carrier's lien is  
15 limited to charges stated in the bill or the applicable tariffs  
16 or, if no charges are stated, a reasonable charge.

17 (b) A lien for charges and expenses under  
18 Subsection (a) of this section on goods that the carrier was  
19 required by law to receive for transportation is effective  
20 against the consignor or any person entitled to the goods  
21 unless the carrier had notice that the consignor lacked  
22 authority to subject the goods to those charges and expenses.  
23 Any other lien under Subsection (a) of this section is  
24 effective against the consignor and any person that permitted  
25 the bailor to have control or possession of the goods unless

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1 the carrier had notice that the bailor lacked authority.

2 (c) A carrier loses its lien on any goods that it  
3 voluntarily delivers or unjustifiably refuses to deliver."

4 Section 74. Section 55-7-308 NMSA 1978 (being Laws 1961,  
5 Chapter 96, Section 7-308) is repealed and a new Section  
6 55-7-308 NMSA 1978 is enacted to read:

7 "55-7-308. [NEW MATERIAL] ENFORCEMENT OF CARRIER'S  
8 LIEN.--

9 (a) A carrier's lien on goods may be enforced by  
10 public or private sale of the goods, in bulk or in packages, at  
11 any time or place and on any terms that are commercially  
12 reasonable, after notifying all persons known to claim an  
13 interest in the goods. The notification must include a  
14 statement of the amount due, the nature of the proposed sale  
15 and the time and place of any public sale. The fact that a  
16 better price could have been obtained by a sale at a different  
17 time or in a method different from that selected by the carrier  
18 is not of itself sufficient to establish that the sale was not  
19 made in a commercially reasonable manner. The carrier sells  
20 goods in a commercially reasonable manner if the carrier sells  
21 the goods in the usual manner in any recognized market  
22 therefor, sells at the price current in that market at the time  
23 of the sale or otherwise sells in conformity with commercially  
24 reasonable practices among dealers in the type of goods sold.  
25 A sale of more goods than apparently necessary to be offered to

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1 ensure satisfaction of the obligation is not commercially  
2 reasonable, except in cases covered by the preceding sentence.

3 (b) Before any sale pursuant to this section, any  
4 person claiming a right in the goods may pay the amount  
5 necessary to satisfy the lien and the reasonable expenses  
6 incurred in complying with this section. In that event, the  
7 goods may not be sold but must be retained by the carrier,  
8 subject to the terms of the bill of lading and this article.

9 (c) A carrier may buy at any public sale pursuant  
10 to this section.

11 (d) A purchaser in good faith of goods sold to  
12 enforce a carrier's lien takes the goods free of any rights of  
13 persons against which the lien was valid, despite the carrier's  
14 noncompliance with this section.

15 (e) A carrier may satisfy its lien from the  
16 proceeds of any sale pursuant to this section but shall hold  
17 the balance, if any, for delivery on demand to any person to  
18 which the carrier would have been bound to deliver the goods.

19 (f) The rights provided by this section are in  
20 addition to all other rights allowed by law to a creditor  
21 against a debtor.

22 (g) A carrier's lien may be enforced pursuant to  
23 either Subsection (a) of this section or the procedure set  
24 forth in Subsection (b) of Section 55-7-210 NMSA 1978.

25 (h) A carrier is liable for damages caused by

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1 failure to comply with the requirements for sale under this  
2 section and, in case of willful violation, is liable for  
3 conversion."

4 Section 75. Section 55-7-309 NMSA 1978 (being Laws 1961,  
5 Chapter 96, Section 7-309) is repealed and a new Section  
6 55-7-309 NMSA 1978 is enacted to read:

7 "55-7-309. [NEW MATERIAL] DUTY OF CARE--CONTRACTUAL  
8 LIMITATION OF CARRIER'S LIABILITY.--

9 (a) A carrier that issues a bill of lading, whether  
10 negotiable or nonnegotiable, shall exercise the degree of care  
11 in relation to the goods that a reasonably careful person would  
12 exercise under similar circumstances. This subsection does not  
13 affect any statute, regulation or rule of law that imposes  
14 liability upon a common carrier for damages not caused by its  
15 negligence.

16 (b) Damages may be limited by a term in the bill of  
17 lading or in a transportation agreement that the carrier's  
18 liability may not exceed a value stated in the bill or  
19 transportation agreement if the carrier's rates are dependent  
20 upon value and the consignor is afforded an opportunity to  
21 declare a higher value and the consignor is advised of the  
22 opportunity. However, such a limitation is not effective with  
23 respect to the carrier's liability for conversion to its own  
24 use.

25 (c) Reasonable provisions as to the time and manner

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1 of presenting claims and commencing actions based on the  
2 shipment may be included in a bill of lading or a  
3 transportation agreement."

4 PART 4

5 WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

6 Section 76. Section 55-7-401 NMSA 1978 (being Laws 1961,  
7 Chapter 96, Section 7-401) is repealed and a new Section  
8 55-7-401 NMSA 1978 is enacted to read:

9 "55-7-401. [NEW MATERIAL] IRREGULARITIES IN ISSUE OF  
10 RECEIPT OR BILL OR CONDUCT OF ISSUER.--The obligations imposed  
11 by Chapter 55, Article 7 NMSA 1978 on an issuer apply to a  
12 document of title even if:

13 (1) the document does not comply with the  
14 requirements of Chapter 55, Article 7 NMSA 1978 or of any other  
15 statute, rule or regulation regarding its issuance, form or  
16 content;

17 (2) the issuer violated laws regulating the conduct  
18 of its business;

19 (3) the goods covered by the document were owned by  
20 the bailee when the document was issued; or

21 (4) the person issuing the document is not a  
22 warehouse, but the document purports to be a warehouse  
23 receipt."

24 Section 77. Section 55-7-402 NMSA 1978 (being Laws 1961,  
25 Chapter 96, Section 7-402) is repealed and a new Section

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1 55-7-402 NMSA 1978 is enacted to read:

2 "55-7-402. [NEW MATERIAL] DUPLICATE DOCUMENT OF TITLE;  
3 OVERISSUE.--A duplicate or any other document of title  
4 purporting to cover goods already represented by an outstanding  
5 document of the same issuer does not confer any right in the  
6 goods, except as provided in the case of tangible bills of  
7 lading in a set of parts; overissue of documents for fungible  
8 goods; substitutes for lost, stolen or destroyed documents; or  
9 substitute documents issued pursuant to Section 55-7-105 NMSA  
10 1978. The issuer is liable for damages caused by its overissue  
11 or failure to identify a duplicate document by a conspicuous  
12 notation."

13 Section 78. Section 55-7-403 NMSA 1978 (being Laws 1961,  
14 Chapter 96, Section 7-403) is repealed and a new Section  
15 55-7-403 NMSA 1978 is enacted to read:

16 "55-7-403. [NEW MATERIAL] OBLIGATION OF BAILEE TO  
17 DELIVER--EXCUSE.--

18 (a) A bailee shall deliver the goods to a person  
19 entitled under a document of title if the person complies with  
20 Subsections (b) and (c) of this section, unless and to the  
21 extent that the bailee establishes any of the following:

22 (1) delivery of the goods to a person whose  
23 receipt was rightful as against the claimant;

24 (2) damage to or delay, loss or destruction of  
25 the goods for which the bailee is not liable;

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1 (3) previous sale or other disposition of the  
2 goods in lawful enforcement of a lien or on a warehouse's  
3 lawful termination of storage;

4 (4) the exercise by a seller of its right to  
5 stop delivery pursuant to Section 55-2-705 NMSA 1978 or by a  
6 lessor of its right to stop delivery pursuant to Section  
7 55-2A-526 NMSA 1978;

8 (5) a diversion, reconsignment or other  
9 disposition pursuant to Section 55-7-303 NMSA 1978;

10 (6) release, satisfaction or any other  
11 personal defense against the claimant; or

12 (7) any other lawful excuse.

13 (b) A person claiming goods covered by a document  
14 of title shall satisfy the bailee's lien if the bailee so  
15 requests or if the bailee is prohibited by law from delivering  
16 the goods until the charges are paid.

17 (c) Unless a person claiming the goods is a person  
18 against which the document of title does not confer a right  
19 under Subsection (a) of Section 55-7-503 NMSA 1978:

20 (1) the person claiming under a document shall  
21 surrender possession or control of any outstanding negotiable  
22 document covering the goods for cancellation or indication of  
23 partial deliveries; and

24 (2) the bailee shall cancel the document or  
25 conspicuously indicate in the document the partial delivery or

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1 the bailee is liable to any person to which the document is  
2 duly negotiated."

3 Section 79. Section 55-7-404 NMSA 1978 (being Laws 1961,  
4 Chapter 96, Section 7-404) is repealed and a new Section  
5 55-7-404 NMSA 1978 is enacted to read:

6 "55-7-404. [NEW MATERIAL] NO LIABILITY FOR GOOD-FAITH  
7 DELIVERY PURSUANT TO DOCUMENT OF TITLE.--A bailee that in good  
8 faith has received goods and delivered or otherwise disposed of  
9 the goods according to the terms of a document of title or  
10 pursuant to Chapter 55, Article 7 NMSA 1978 is not liable for  
11 the goods even if:

12 (1) the person from which the bailee received the  
13 goods did not have authority to procure the document or to  
14 dispose of the goods; or

15 (2) the person to which the bailee delivered the  
16 goods did not have authority to receive the goods."

17 PART 5

18 WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND  
19 TRANSFER

20 Section 80. Section 55-7-501 NMSA 1978 (being Laws 1961,  
21 Chapter 96, Section 7-501) is repealed and a new Section  
22 55-7-501 NMSA 1978 is enacted to read:

23 "55-7-501. [NEW MATERIAL] FORM OF NEGOTIATION AND  
24 REQUIREMENTS OF DUE NEGOTIATION.--

25 (a) The following rules apply to a negotiable

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1 tangible document of title:

2 (1) if the document's original terms run to  
3 the order of a named person, the document is negotiated by the  
4 named person's indorsement and delivery. After the named  
5 person's indorsement in blank or to bearer, any person may  
6 negotiate the document by delivery alone;

7 (2) if the document's original terms run to  
8 bearer, it is negotiated by delivery alone;

9 (3) if the document's original terms run to  
10 the order of a named person and it is delivered to the named  
11 person, the effect is the same as if the document had been  
12 negotiated;

13 (4) negotiation of the document after it has  
14 been indorsed to a named person requires indorsement by the  
15 named person and delivery; and

16 (5) a document is duly negotiated if it is  
17 negotiated in the manner stated in this subsection to a holder  
18 that purchases it in good faith, without notice of any defense  
19 against or claim to it on the part of any person, and for  
20 value, unless it is established that the negotiation is not in  
21 the regular course of business or financing or involves  
22 receiving the document in settlement or payment of a monetary  
23 obligation.

24 (b) The following rules apply to a negotiable  
25 electronic document of title:

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1                   (1) if the document's original terms run to  
2 the order of a named person or to bearer, the document is  
3 negotiated by delivery of the document to another person.  
4 Indorsement by the named person is not required to negotiate  
5 the document;

6                   (2) if the document's original terms run to  
7 the order of a named person and the named person has control of  
8 the document, the effect is the same as if the document had  
9 been negotiated; and

10                   (3) a document is duly negotiated if it is  
11 negotiated in the manner stated in this subsection to a holder  
12 that purchases it in good faith, without notice of any defense  
13 against or claim to it on the part of any person, and for  
14 value, unless it is established that the negotiation is not in  
15 the regular course of business or financing or involves taking  
16 delivery of the document in settlement or payment of a monetary  
17 obligation;

18                   (c) Indorsement of a nonnegotiable document of  
19 title neither makes it negotiable nor adds to the transferee's  
20 rights.

21                   (d) The naming in a negotiable bill of lading of a  
22 person to be notified of the arrival of the goods does not  
23 limit the negotiability of the bill or constitute notice to a  
24 purchaser of the bill of any interest of that person in the  
25 goods."

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1           Section 81. Section 55-7-502 NMSA 1978 (being Laws 1961,  
2 Chapter 96, Section 7-502) is repealed and a new Section  
3 55-7-502 NMSA 1978 is enacted to read:

4           "55-7-502. [NEW MATERIAL] RIGHTS ACQUIRED BY DUE  
5 NEGOTIATION.--

6           (a) Subject to Sections 55-7-205 and 55-7-503 NMSA  
7 1978, a holder to which a negotiable document of title has been  
8 duly negotiated acquires thereby:

- 9                   (1) title to the document;
- 10                   (2) title to the goods;
- 11                   (3) all rights accruing under the law of  
12 agency or estoppel, including rights to goods delivered to the  
13 bailee after the document was issued; and

14                   (4) the direct obligation of the issuer to  
15 hold or deliver the goods according to the terms of the  
16 document free of any defense or claim by the issuer except  
17 those arising under the terms of the document or under Chapter  
18 55, Article 7 NMSA 1978, but in the case of a delivery order,  
19 the bailee's obligation accrues only upon the bailee's  
20 acceptance of the delivery order and the obligation acquired by  
21 the holder is that the issuer and any indorser will procure the  
22 acceptance of the bailee.

23           (b) Subject to Section 55-7-503 NMSA 1978, title  
24 and rights acquired by due negotiation are not defeated by any  
25 stoppage of the goods represented by the document of title or

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1 by surrender of the goods by the bailee and are not impaired  
2 even if:

3 (1) the due negotiation or any prior due  
4 negotiation constituted a breach of duty;

5 (2) any person has been deprived of possession  
6 of a negotiable tangible document or control of a negotiable  
7 electronic document by misrepresentation, fraud, accident,  
8 mistake, duress, loss, theft or conversion; or

9 (3) a previous sale or other transfer of the  
10 goods or document has been made to a third person."

11 Section 82. Section 55-7-503 NMSA 1978 (being Laws 1961,  
12 Chapter 96, Section 7-503, as amended) is repealed and a new  
13 Section 55-7-503 NMSA 1978 is enacted to read:

14 "55-7-503. [NEW MATERIAL] DOCUMENT OF TITLE TO GOODS  
15 DEFEATED IN CERTAIN CASES.--

16 (a) A document of title confers no right in goods  
17 against a person that before issuance of the document had a  
18 legal interest or a perfected security interest in the goods  
19 and that did not:

20 (1) deliver or entrust the goods or any  
21 document of title covering the goods to the bailor or the  
22 bailor's nominee with:

23 (A) actual or apparent authority to  
24 ship, store or sell;

25 (B) power to obtain delivery under

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1 Section 55-7-403 NMSA 1978; or

2 (C) power of disposition under Section  
3 55-2-403, Subsection (2) of Section 55-2A-304, Subsection (2)  
4 of Section 55-2A-305, Section 55-9-320 or Subsection (c) of  
5 Section 55-9-321 NMSA 1978 or other statute or rule of law; or

6 (2) acquiesce in the procurement by the bailor  
7 or its nominee of any document.

8 (b) Title to goods based upon an unaccepted  
9 delivery order is subject to the rights of any person to which  
10 a negotiable warehouse receipt or bill of lading covering the  
11 goods has been duly negotiated. That title may be defeated  
12 under Section 55-7-504 NMSA 1978 to the same extent as the  
13 rights of the issuer or a transferee from the issuer.

14 (c) Title to goods based upon a bill of lading  
15 issued to a freight forwarder is subject to the rights of any  
16 person to which a bill issued by the freight forwarder is duly  
17 negotiated. However, delivery by the carrier in accordance  
18 with Part 4 of this article pursuant to its own bill of lading  
19 discharges the carrier's obligation to deliver."

20 Section 83. Section 55-7-504 NMSA 1978 (being Laws 1961,  
21 Chapter 96, Section 7-504) is repealed and a new Section  
22 55-7-504 NMSA 1978 is enacted to read:

23 "55-7-504. [NEW MATERIAL] RIGHTS ACQUIRED IN ABSENCE OF  
24 DUE NEGOTIATION--EFFECT OF DIVERSION; STOPPAGE OF DELIVERY.--

25 (a) A transferee of a document of title, whether

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1 negotiable or nonnegotiable, to which the document has been  
2 delivered but not duly negotiated, acquires the title and  
3 rights that its transferor had or had actual authority to  
4 convey.

5 (b) In the case of a transfer of a nonnegotiable  
6 document of title, until but not after the bailee receives  
7 notice of the transfer, the rights of the transferee may be  
8 defeated:

9 (1) by those creditors of the transferor that  
10 could treat the transfer as void under Section 55-2-402 or  
11 55-2A-308 NMSA 1978;

12 (2) by a buyer from the transferor in ordinary  
13 course of business if the bailee has delivered the goods to the  
14 buyer or received notification of the buyer's rights;

15 (3) by a lessee from the transferor in  
16 ordinary course of business if the bailee has delivered the  
17 goods to the lessee or received notification of the lessee's  
18 rights; or

19 (4) as against the bailee, by good-faith  
20 dealings of the bailee with the transferor.

21 (c) A diversion or other change of shipping  
22 instructions by the consignor in a nonnegotiable bill of lading  
23 that causes the bailee not to deliver the goods to the  
24 consignee defeats the consignee's title to the goods if the  
25 goods have been delivered to a buyer in ordinary course of

1 business or a lessee in ordinary course of business and, in any  
2 event, defeats the consignee's rights against the bailee.

3 (d) Delivery of the goods pursuant to a  
4 nonnegotiable document of title may be stopped by a seller  
5 under Section 55-2-705 NMSA 1978 or a lessor under Section  
6 55-2A-526 NMSA 1978, subject to the requirements of due  
7 notification in those sections. A bailee that honors the  
8 seller's or lessor's instructions is entitled to be indemnified  
9 by the seller or lessor against any resulting loss or expense."

10 Section 84. Section 55-7-505 NMSA 1978 (being Laws 1961,  
11 Chapter 96, Section 7-505) is repealed and a new Section  
12 55-7-505 NMSA 1978 is enacted to read:

13 "55-7-505. [NEW MATERIAL] INDORSER NOT GUARANTOR FOR  
14 OTHER PARTIES.--The indorsement of a tangible document of title  
15 issued by a bailee does not make the indorser liable for any  
16 default by the bailee or previous indorsers."

17 Section 85. Section 55-7-506 NMSA 1978 (being Laws 1961,  
18 Chapter 96, Section 7-506) is repealed and a new Section  
19 55-7-506 NMSA 1978 is enacted to read:

20 "55-7-506. [NEW MATERIAL] DELIVERY WITHOUT INDORSEMENT--  
21 RIGHT TO COMPEL INDORSEMENT.--The transferee of a negotiable  
22 tangible document of title has a specifically enforceable right  
23 to have its transferor supply any necessary indorsement, but  
24 the transfer becomes a negotiation only as of the time the  
25 indorsement is supplied."

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1           Section 86. Section 55-7-507 NMSA 1978 (being Laws 1961,  
2 Chapter 96, Section 7-507) is repealed and a new Section  
3 55-7-507 NMSA 1978 is enacted to read:

4           "55-7-507. [NEW MATERIAL] WARRANTIES ON NEGOTIATION OR  
5 DELIVERY OF DOCUMENT OF TITLE.--If a person negotiates or  
6 delivers a document of title for value, otherwise than as a  
7 mere intermediary under Section 55-7-508 NMSA 1978, unless  
8 otherwise agreed, the transferor, in addition to any warranty  
9 made in selling or leasing the goods, warrants to its immediate  
10 purchaser only that:

11                   (1) the document is genuine;

12                   (2) the transferor does not have knowledge of any  
13 fact that would impair the document's validity or worth; and

14                   (3) the negotiation or delivery is rightful and  
15 fully effective with respect to the title to the document and  
16 the goods it represents."

17           Section 87. Section 55-7-508 NMSA 1978 (being Laws 1961,  
18 Chapter 96, Section 7-508) is repealed and a new Section  
19 55-7-508 NMSA 1978 is enacted to read:

20           "55-7-508. [NEW MATERIAL] WARRANTIES OF COLLECTING BANK  
21 AS TO DOCUMENTS OF TITLE.--A collecting bank or other  
22 intermediary known to be entrusted with documents of title on  
23 behalf of another or with collection of a draft or other claim  
24 against delivery of documents warrants by the delivery of the  
25 documents only its own good faith and authority even if the

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1 collecting bank or other intermediary has purchased or made  
2 advances against the claim or draft to be collected."

3 Section 88. Section 55-7-509 NMSA 1978 (being Laws 1961,  
4 Chapter 96, Section 7-509) is repealed and a new Section  
5 55-7-509 NMSA 1978 is enacted to read:

6 "55-7-509. [NEW MATERIAL] ADEQUATE COMPLIANCE WITH  
7 COMMERCIAL CONTRACT.--Whether a document of title is adequate  
8 to fulfill the obligations of a contract for sale, a contract  
9 for lease or the conditions of a letter of credit is determined  
10 by Article 2, 2A or 5 of the Uniform Commercial Code."

11 PART 6

12 WAREHOUSE RECEIPTS AND BILLS OF LADING:

13 MISCELLANEOUS PROVISIONS

14 Section 89. Section 55-7-601 NMSA 1978 (being Laws 1961,  
15 Chapter 96, Section 7-601) is repealed and a new Section  
16 55-7-601 NMSA 1978 is enacted to read:

17 "55-7-601. [NEW MATERIAL] LOST, STOLEN OR DESTROYED  
18 DOCUMENTS OF TITLE.--

19 (a) If a document of title is lost, stolen or  
20 destroyed, a court may order delivery of the goods or issuance  
21 of a substitute document and the bailee may without liability  
22 to any person comply with the order. If the document was  
23 negotiable, a court may not order delivery of the goods or  
24 issuance of a substitute document without the claimant's  
25 posting security unless it finds that any person that may

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1 suffer loss as a result of nonsurrender of possession or  
2 control of the document is adequately protected against the  
3 loss. If the document was nonnegotiable, the court may require  
4 security. The court may also order payment of the bailee's  
5 reasonable costs and attorney fees in any action under this  
6 subsection.

7 (b) A bailee that, without a court order, delivers  
8 goods to a person claiming under a missing negotiable document  
9 of title is liable to any person injured thereby. If the  
10 delivery is not in good faith, the bailee is liable for  
11 conversion. Delivery in good faith is not conversion if the  
12 claimant posts security with the bailee in an amount at least  
13 double the value of the goods at the time of posting to  
14 indemnify any person injured by the delivery that files a  
15 notice of claim within one year after the delivery."

16 Section 90. Section 55-7-602 NMSA 1978 (being Laws 1961,  
17 Chapter 96, Section 7-602) is repealed and a new Section  
18 55-7-602 NMSA 1978 is enacted to read:

19 "55-7-602. [NEW MATERIAL] JUDICIAL PROCESS AGAINST GOODS  
20 COVERED BY NEGOTIABLE DOCUMENT OF TITLE.--Unless a document of  
21 title was originally issued upon delivery of the goods by a  
22 person that did not have power to dispose of them, a lien does  
23 not attach by virtue of any judicial process to goods in the  
24 possession of a bailee for which a negotiable document of title  
25 is outstanding unless possession or control of the document is

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1 first surrendered to the bailee or the document's negotiation  
2 is enjoined. The bailee may not be compelled to deliver the  
3 goods pursuant to process until possession or control of the  
4 document is surrendered to the bailee or to the court. A  
5 purchaser of the document for value without notice of the  
6 process or injunction takes free of the lien imposed by  
7 judicial process."

8 Section 91. Section 55-7-603 NMSA 1978 (being Laws 1961,  
9 Chapter 96, Section 7-603) is repealed and a new Section  
10 55-7-603 NMSA 1978 is enacted to read:

11 "55-7-603. [NEW MATERIAL] CONFLICTING CLAIMS--  
12 INTERPLEADER.--If more than one person claims title to or  
13 possession of the goods, the bailee is excused from delivery  
14 until the bailee has a reasonable time to ascertain the  
15 validity of the adverse claims or to commence an action for  
16 interpleader. The bailee may assert an interpleader either in  
17 defending an action for nondelivery of the goods or by original  
18 action."

19 Section 92. Section 55-8-102 NMSA 1978 (being Laws 1996,  
20 Chapter 47, Section 6) is amended to read:

21 "55-8-102. DEFINITIONS.--

22 (a) In this article:

23 (1) "adverse claim" means a claim that a  
24 claimant has a property interest in a financial asset and that  
25 it is a violation of the rights of the claimant for another

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1 person to hold, transfer or deal with the financial asset;

2 (2) "bearer form", as applied to a  
3 certificated security, means a form in which the security is  
4 payable to the bearer of the security certificate according to  
5 its terms but not by reason of an indorsement;

6 (3) "broker" means a person defined as a  
7 broker or dealer under the federal securities laws, but without  
8 excluding a bank acting in that capacity;

9 (4) "certificated security" means a security  
10 that is represented by a certificate;

11 (5) "clearing corporation" means:

12 (i) a person that is registered as a  
13 "clearing agency" under the federal securities laws;

14 (ii) a federal reserve bank; or

15 (iii) any other person that provides  
16 clearance or settlement services with respect to financial  
17 assets that would require it to register as a clearing agency  
18 under the federal securities laws but for an exclusion or  
19 exemption from the registration requirement, if its activities  
20 as a clearing corporation, including promulgation of rules, are  
21 subject to regulation by a federal or state governmental  
22 authority;

23 (6) "communicate" means to:

24 (i) send a signed writing; or

25 (ii) transmit information by any

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1 mechanism agreed upon by the persons transmitting and receiving  
2 the information;

3 (7) "entitlement holder" means a person  
4 identified in the records of a securities intermediary as the  
5 person having a security entitlement against the securities  
6 intermediary. If a person acquires a security entitlement by  
7 virtue of Paragraph (2) or (3) of Subsection (b) of Section  
8 55-8-501 [~~(b)(2) or (3)~~] NMSA 1978, that person is the  
9 entitlement holder;

10 (8) "entitlement order" means a notification  
11 communicated to a securities intermediary directing transfer or  
12 redemption of a financial asset to which the entitlement holder  
13 has a security entitlement;

14 (9) "financial asset", except as otherwise  
15 provided in Section 55-8-103 NMSA 1978, means:

16 (i) a security;  
17 (ii) an obligation of a person or a  
18 share, participation or other interest in a person or in  
19 property or an enterprise of a person, which is, or is of a  
20 type, dealt in or traded on financial markets, or which is  
21 recognized in any area in which it is issued or dealt in as a  
22 medium for investment; or

23 (iii) any property that is held by a  
24 securities intermediary for another person in a securities  
25 account if the securities intermediary has expressly agreed

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1 with the other person that the property is to be treated as a  
2 financial asset under this article. As context requires, the  
3 term means either the interest itself or the means by which a  
4 person's claim to it is evidenced, including a certificated or  
5 uncertificated security, a security certificate or a security  
6 entitlement;

7 (10) ~~["good faith", for purposes of the~~  
8 ~~obligation of good faith in the performance or enforcement of~~  
9 ~~contracts or duties within this article, means honesty in fact~~  
10 ~~and the observance of reasonable commercial standards of fair~~  
11 ~~dealing;]~~ [Reserved];

12 (11) "indorsement" means a signature that  
13 alone or accompanied by other words is made on a security  
14 certificate in registered form or on a separate document for  
15 the purpose of assigning, transferring or redeeming the  
16 security or granting a power to assign, transfer or redeem it;

17 (12) "instruction" means a notification  
18 communicated to the issuer of an uncertificated security  
19 ~~[which]~~ that directs that the transfer of the security be  
20 registered or that the security be redeemed;

21 (13) "registered form", as applied to a  
22 certificated security, means a form in which:

23 (i) the security certificate specifies a  
24 person entitled to the security; and

25 (ii) a transfer of the security may be

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1 registered upon books maintained for that purpose by or on  
2 behalf of the issuer or the security certificate so states;

3 (14) "securities intermediary" means:

4 (i) a clearing corporation; or

5 (ii) a person, including a bank or  
6 broker, that in the ordinary course of its business maintains  
7 securities accounts for others and is acting in that capacity;

8 (15) "security", except as otherwise provided  
9 in Section 55-8-103 NMSA 1978, means an obligation of an issuer  
10 or a share, participation or other interest in an issuer or in  
11 property or an enterprise of an issuer:

12 (i) [~~which~~] that is represented by a  
13 security certificate in bearer or registered form or the  
14 transfer of which may be registered upon books maintained for  
15 that purpose by or on behalf of the issuer;

16 (ii) [~~which~~] that is one of a class or  
17 series or by its terms is divisible into a class or series of  
18 shares, participations, interests or obligations; and

19 (iii) [~~which~~] that:

20 (A) is, or is of a type, dealt in  
21 or traded on securities exchanges or securities markets; or

22 (B) is a medium for investment and  
23 by its terms expressly provides that it is a security governed  
24 by this article;

25 (16) "security certificate" means a

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1 certificate representing a security;

2 (17) "security entitlement" means the rights  
3 and property interest of an entitlement holder with respect to  
4 a financial asset specified in Part 5 of this article; and

5 (18) "uncertificated security" means a  
6 security that is not represented by a certificate.

7 (b) Other definitions applying to this article and  
8 the sections in which they appear are:

9 appropriate person Section 55-8-107 NMSA 1978;

10 control Section 55-8-106 NMSA 1978;

11 delivery Section 55-8-301 NMSA 1978;

12 investment company

13 security Section 55-8-103 NMSA 1978;

14 issuer Section 55-8-201 NMSA 1978;

15 overissue Section 55-8-210 NMSA 1978;

16 protected purchaser Section 55-8-303 NMSA 1978;

17 and

18 securities account Section 55-8-501 NMSA 1978.

19 (c) In addition, Chapter 55, Article 1 NMSA 1978  
20 contains general definitions and principles of construction and  
21 interpretation applicable throughout this article.

22 (d) The characterization of a person, business or  
23 transaction for purposes of this article does not determine the  
24 characterization of the person, business or transaction for  
25 purposes of any other law, regulation or rule."

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1           Section 93. Section 55-8-103 NMSA 1978 (being Laws 1996,  
2 Chapter 47, Section 7, as amended) is amended to read:

3           "55-8-103. RULES FOR DETERMINING WHETHER CERTAIN  
4 OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.--

5           (a) A share or similar equity interest issued by a  
6 corporation, business trust, joint stock company or similar  
7 entity is a security.

8           (b) An "investment company security" is a security.  
9 "Investment company security" means a share or similar equity  
10 interest issued by an entity that is registered as an  
11 investment company under the federal investment company laws,  
12 an interest in a unit investment trust that is so registered or  
13 a face-amount certificate issued by a face-amount certificate  
14 company that is so registered. Investment company security  
15 does not include an insurance policy or endowment policy or  
16 annuity contract issued by an insurance company.

17           (c) An interest in a partnership or limited  
18 liability company is not a security unless it is dealt in or  
19 traded on securities exchanges or in securities markets, its  
20 terms expressly provide that it is a security governed by this  
21 article or it is an investment company security. However, an  
22 interest in a partnership or limited liability company is a  
23 financial asset if it is held in a securities account.

24           (d) A writing that is a security certificate is  
25 governed by ~~[this article]~~ Chapter 55, Article 8 NMSA 1978 and

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1 not by Chapter 55, Article 3 NMSA 1978, even though it also  
2 meets the requirements of that article. However, a negotiable  
3 instrument governed by Chapter 55, Article 3 NMSA 1978 is a  
4 financial asset if it is held in a securities account.

5 (e) An option or similar obligation issued by a  
6 clearing corporation to its participants is not a security. It  
7 is a financial asset.

8 (f) A commodity contract, as defined in Paragraph  
9 (15) of Subsection (a) of Section 55-9-102 NMSA 1978, is not a  
10 security or a financial asset.

11 (g) A document of title is not a financial asset  
12 unless Subparagraph (iii) of Paragraph (9) of Subsection (a) of  
13 Section 55-8-102 NMSA 1978 applies."

14 Section 94. Section 55-9-102 NMSA 1978 (being Laws 2001,  
15 Chapter 139, Section 2) is amended to read:

16 "55-9-102. DEFINITIONS AND INDEX OF DEFINITIONS.--

17 (a) In Chapter 55, Article 9 NMSA 1978:

18 (1) "accession" means goods that are  
19 physically united with other goods in such a manner that the  
20 identity of the original goods is not lost;

21 (2) "account", except as used in "account  
22 for":

23 (A) means a right to payment of a  
24 monetary obligation, whether or not earned by performance:

25 (i) for property that has been or

1 is to be sold, leased, licensed, assigned or otherwise disposed  
2 of;

3 (ii) for services rendered or to be  
4 rendered;

5 (iii) for a policy of insurance  
6 issued or to be issued;

7 (iv) for a secondary obligation  
8 incurred or to be incurred;

9 (v) for energy provided or to be  
10 provided;

11 (vi) for the use or hire of a  
12 vessel under a charter or other contract;

13 (vii) arising out of the use of a  
14 credit or charge card or information contained on or for use  
15 with the card; or

16 (viii) as winnings in a lottery or  
17 other game of chance operated or sponsored by a state,  
18 governmental unit of a state or person licensed or authorized  
19 to operate the game by a state or governmental unit of a state;  
20 and

21 (B) includes health-care-insurance  
22 receivables; but

23 (C) does not include:

24 (i) rights to payment evidenced by  
25 chattel paper or an instrument;

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- 1 (ii) commercial tort claims;  
2 (iii) deposit accounts;  
3 (iv) investment property;  
4 (v) letter-of-credit rights or  
5 letters of credit; or  
6 (vi) rights to payment for money or  
7 funds advanced or sold, other than rights arising out of the  
8 use of a credit or charge card or information contained on or  
9 for use with the card;

10 (3) "account debtor" means a person obligated  
11 on an account, chattel paper or general intangible. The term  
12 does not include persons obligated to pay a negotiable  
13 instrument, even if the instrument constitutes part of chattel  
14 paper;

15 (4) "accounting", except as used in  
16 "accounting for", means a record:

- 17 (A) authenticated by a secured party;  
18 (B) indicating the aggregate unpaid  
19 secured obligations as of a date not more than thirty-five days  
20 earlier or thirty-five days later than the date of the record;  
21 and

22 (C) identifying the components of the  
23 obligations in reasonable detail;

24 (5) "agricultural lien" means an interest  
25 [~~other than a security interest~~] in farm products:

1 (A) that secures payment or performance  
2 of an obligation for:

3 (i) goods or services furnished in  
4 connection with a debtor's farming operation; or

5 (ii) rent on real property leased  
6 by a debtor in connection with its farming operation;

7 (B) that is created by statute in favor  
8 of a person that:

9 (i) in the ordinary course of its  
10 business furnished goods or services to a debtor in connection  
11 with a debtor's farming operation; or

12 (ii) leased real property to a  
13 debtor in connection with the debtor's farming operation; and

14 (C) whose effectiveness does not depend  
15 on the person's possession of the personal property;

16 (6) "as-extracted collateral" means:

17 (A) oil, gas or other minerals that are  
18 subject to a security interest that:

19 (i) is created by a debtor having  
20 an interest in the minerals before extraction; and

21 (ii) attaches to the minerals as  
22 extracted; or

23 (B) accounts arising out of the sale at  
24 the wellhead or minehead of oil, gas or other minerals in which  
25 the debtor had an interest before extraction;

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1 (7) "authenticate" means to:

2 (A) sign; or

3 (B) execute or otherwise adopt a symbol,  
4 or encrypt or similarly process a record in whole or in part,  
5 with the present intent of the authenticating person to  
6 identify the person and adopt or accept a record;

7 (8) "bank" means an organization that is  
8 engaged in the business of banking and includes savings banks,  
9 savings and loan associations, credit unions and trust  
10 companies;

11 (9) "cash proceeds" means proceeds that are  
12 money, checks, deposit accounts or the like;

13 (10) "certificate of title" means a  
14 certificate of title with respect to which a statute provides  
15 for the security interest in question to be indicated on the  
16 certificate as a condition or result of the security interest's  
17 obtaining priority over the rights of a lien creditor with  
18 respect to the collateral;

19 (11) "chattel paper" means a record or records  
20 that evidence both a monetary obligation and a security  
21 interest in specific goods, a security interest in specific  
22 goods and software used in the goods, a security interest in  
23 specific goods and license of software used in the goods, a  
24 lease of specific goods or a lease of specific goods and  
25 license of software used in the goods. In this paragraph,

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1 "monetary obligation" means a monetary obligation secured by  
2 the goods or owed under a lease of the goods and includes a  
3 monetary obligation with respect to software used in the goods.

4 The term does not include:

5 (A) charters or other contracts  
6 involving the use or hire of a vessel; or

7 (B) records that evidence a right to  
8 payment arising out of the use of a credit or charge card or  
9 information contained on or for use with the card. If a  
10 transaction is evidenced by records that include an instrument  
11 or series of instruments, the group of records taken together  
12 constitutes chattel paper;

13 (12) "collateral" means the property subject  
14 to a security interest or agricultural lien and includes:

15 (A) proceeds to which a security  
16 interest attaches;

17 (B) accounts, chattel paper, payment  
18 intangibles and promissory notes that have been sold; and

19 (C) goods that are the subject of a  
20 consignment;

21 (13) "commercial tort claim" means a claim  
22 arising in tort with respect to which:

23 (A) the claimant is an organization; or

24 (B) the claimant is an individual and  
25 the claim:

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1 (i) arose in the course of the  
2 claimant's business or profession; and

3 (ii) does not include damages  
4 arising out of personal injury to or the death of an  
5 individual;

6 (14) "commodity account" means an account  
7 maintained by a commodity intermediary in which a commodity  
8 contract is carried for a commodity customer;

9 (15) "commodity contract" means a commodity  
10 futures contract, an option on a commodity futures contract, a  
11 commodity option or another contract if the contract or option  
12 is:

13 (A) traded on or subject to the rules of  
14 a board of trade that has been designated as a contract market  
15 for such a contract pursuant to federal commodities laws; or

16 (B) traded on a foreign commodity board  
17 of trade, exchange or market, and is carried on the books of a  
18 commodity intermediary for a commodity customer;

19 (16) "commodity customer" means a person for  
20 which a commodity intermediary carries a commodity contract on  
21 its books;

22 (17) "commodity intermediary" means a person  
23 that:

24 (A) is registered as a futures  
25 commission merchant under federal commodities law; or

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1 (B) in the ordinary course of its  
2 business provides clearance or settlement services for a board  
3 of trade that has been designated as a contract market pursuant  
4 to federal commodities law;

5 (18) "communicate" means:

6 (A) to send a written or other tangible  
7 record;

8 (B) to transmit a record by any means  
9 agreed upon by the persons sending and receiving the record; or

10 (C) in the case of transmission of a  
11 record to or by a filing office, to transmit a record by any  
12 means prescribed by filing-office rule;

13 (19) "consignee" means a merchant to which  
14 goods are delivered in a consignment;

15 (20) "consignment" means a transaction,  
16 regardless of its form, in which a person delivers goods to a  
17 merchant for the purpose of sale and:

18 (A) the merchant:

19 (i) deals in goods of that kind  
20 under a name other than the name of the person making delivery;

21 (ii) is not an auctioneer; and

22 (iii) is not generally known by its  
23 creditors to be substantially engaged in selling the goods of  
24 others;

25 (B) with respect to each delivery, the

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1 aggregate value of the goods is one thousand dollars (\$1,000)  
2 or more at the time of delivery;

3 (C) the goods are not consumer goods  
4 immediately before delivery; and

5 (D) the transaction does not create a  
6 security interest that secures an obligation;

7 (21) "consignor" means a person that delivers  
8 goods to a consignee in a consignment;

9 (22) "consumer debtor" means a debtor in a  
10 consumer transaction;

11 (23) "consumer goods" means goods that are  
12 used or bought for use primarily for personal, family or  
13 household purposes;

14 (24) "consumer-goods transaction" means a  
15 consumer transaction in which:

16 (A) an individual incurs an obligation  
17 primarily for personal, family or household purposes; and

18 (B) a security interest in consumer  
19 goods secures the obligation;

20 (25) "consumer obligor" means an obligor who  
21 is an individual and who incurred the obligation as part of a  
22 transaction entered into primarily for personal, family or  
23 household purposes;

24 (26) "consumer transaction" means a  
25 transaction in which:

1                    [~~i~~] (A) an individual incurs an  
2 obligation primarily for personal, family or household  
3 purposes;

4                    [~~ii~~] (B) a security interest secures  
5 the obligation; and

6                    [~~iii~~] (C) the collateral is held or  
7 acquired primarily for personal, family or household purposes.  
8 The term includes consumer-goods transactions;

9                    (27) "continuation statement" means an  
10 amendment of a financing statement that:

11                    (A) identifies, by its file number, the  
12 initial financing statement to which it relates; and

13                    (B) indicates that it is a continuation  
14 statement for, or that it is filed to continue the  
15 effectiveness of, the identified financing statement;

16                    (28) "debtor" means:

17                    (A) a person having an interest, other  
18 than a security interest or other lien, in the collateral,  
19 whether or not the person is an obligor;

20                    (B) a seller of accounts, chattel paper,  
21 payment intangibles or promissory notes; or

22                    (C) a consignee;

23                    (29) "deposit account" means a demand, time,  
24 savings, passbook or similar account maintained with a bank.

25 The term does not include investment property or accounts

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1 evidenced by an instrument;

2 (30) "document" means a document of title or a  
3 receipt of the type described in Subsection [~~2~~] (b) of  
4 Section 55-7-201 NMSA 1978;

5 (31) "electronic chattel paper" means chattel  
6 paper evidenced by a record or records consisting of  
7 information stored in an electronic medium;

8 (32) "encumbrance" means a right, other than  
9 an ownership interest, in real property. The term includes  
10 mortgages and other liens on real property;

11 (33) "equipment" means goods other than  
12 inventory, farm products or consumer goods;

13 (34) "farm products" means goods, other than  
14 standing timber, with respect to which the debtor is engaged in  
15 a farming operation and that are:

16 (A) crops grown, growing or to be grown,  
17 including:

18 (i) crops produced on trees, vines  
19 and bushes; and

20 (ii) aquatic goods produced in  
21 aquacultural operations;

22 (B) livestock, born or unborn, including  
23 aquatic goods produced in aquacultural operations;

24 (C) supplies used or produced in a  
25 farming operation; or

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1 (D) products of crops or livestock in  
2 their unmanufactured states;

3 (35) "farming operation" means raising,  
4 cultivating, propagating, fattening, grazing or any other  
5 farming, livestock or aquacultural operation;

6 (36) "file number" means the number assigned  
7 to an initial financing statement pursuant to Subsection (a) of  
8 Section 55-9-519 NMSA 1978;

9 (37) "filing office" means an office  
10 designated in Section 55-9-501 NMSA 1978 as the place to file a  
11 financing statement;

12 (38) "filing-office rule" means a rule adopted  
13 pursuant to Section 55-9-526 NMSA 1978;

14 (39) "financing statement" means a record or  
15 records composed of an initial financing statement and any  
16 filed record relating to the initial financing statement;

17 (40) "fixture filing" means the filing of a  
18 financing statement covering goods that are or are to become  
19 fixtures and satisfying Subsections (a) and (b) of Section  
20 55-9-502 NMSA 1978. The term includes the filing of a  
21 financing statement covering goods of a transmitting utility  
22 that are or are to become fixtures;

23 (41) "fixtures" means goods that have become  
24 so related to particular real property that an interest in them  
25 arises under real property law;

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1 (42) "general intangible" means any personal  
2 property, including things in action, other than accounts,  
3 chattel paper, commercial tort claims, deposit accounts,  
4 documents, goods, instruments, investment property,  
5 letter-of-credit rights, letters of credit, money and oil, gas  
6 or other minerals before extraction. The term includes payment  
7 intangibles and software;

8 (43) [~~"good faith" means honesty in fact and~~  
9 ~~the observance of reasonable commercial standards of fair~~  
10 ~~dealing~~] [Reserved];

11 (44) "goods" means all things that are movable  
12 when a security interest attaches and:

13 (A) includes:

- 14 (i) fixtures;
- 15 (ii) standing timber that is to be  
16 cut and removed under a conveyance or contract for sale;
- 17 (iii) the unborn young of animals;
- 18 (iv) crops grown, growing or to be  
19 grown, even if the crops are produced on trees, vines or  
20 bushes;
- 21 (v) manufactured homes; and
- 22 (vi) a computer program embedded in  
23 goods and any supporting information provided in connection  
24 with a transaction relating to the program if the program is  
25 associated with the goods in such a manner that it customarily

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1 is considered part of the goods, or by becoming the owner of  
2 the goods, a person acquires a right to use the program in  
3 connection with the goods; but

4 (B) does not include:

5 (i) a computer program embedded in  
6 goods that consist solely of the medium in which the program is  
7 embedded; or

8 (ii) accounts, chattel paper,  
9 commercial tort claims, deposit accounts, documents, general  
10 intangibles, instruments, investment property, letter-of-credit  
11 rights, letters of credit, money or oil, gas or other minerals  
12 before extraction;

13 (45) "governmental unit" means a subdivision,  
14 agency, department, county, parish, municipality or other unit  
15 of the government of the United States, a state or a foreign  
16 country. The term includes an organization having a separate  
17 corporate existence if the organization is eligible to issue  
18 debt on which interest is exempt from income taxation under the  
19 laws of the United States;

20 (46) "health-care-insurance receivable" means  
21 an interest in or claim under a policy of insurance that is a  
22 right to payment of a monetary obligation for health care goods  
23 or services provided or to be provided;

24 (47) "instrument" means a negotiable  
25 instrument or any other writing that evidences a right to the

1 payment of a monetary obligation, is not itself a security  
2 agreement or lease and is of a type that in ordinary course of  
3 business is transferred by delivery with any necessary  
4 indorsement or assignment. The term does not include:

- 5 (A) investment property;
- 6 (B) letters of credit; or
- 7 (C) writings that evidence a right to  
8 payment arising out of the use of a credit or charge card or  
9 information contained on or for use with the card;

10 (48) "inventory" means goods, other than farm  
11 products, that:

- 12 (A) are leased by a person as lessor;
- 13 (B) are held by a person for sale or  
14 lease or to be furnished under a contract of service;
- 15 (C) are furnished by a person under a  
16 contract of service; or
- 17 (D) consist of raw materials, work in  
18 process or materials used or consumed in a business;

19 (49) "investment property" means a security,  
20 whether certificated or uncertificated, security entitlement,  
21 securities account, commodity contract or commodity account;

22 (50) "jurisdiction of organization", with  
23 respect to a registered organization, means the jurisdiction  
24 under whose law the organization is organized;

25 (51) "letter-of-credit right" means a right to

1 payment or performance under a letter of credit, whether or not  
2 the beneficiary has demanded or is at the time entitled to  
3 demand payment or performance. The term does not include the  
4 right of a beneficiary to demand payment or performance under a  
5 letter of credit;

6 (52) "lien creditor" means:

7 (A) a creditor that has acquired a lien  
8 on the property involved by attachment, levy or the like;

9 (B) an assignee for benefit of creditors  
10 from the time of assignment;

11 (C) a trustee in bankruptcy from the  
12 date of the filing of the petition; or

13 (D) a receiver in equity from the time  
14 of appointment;

15 (53) "manufactured home" means a structure,  
16 transportable in one or more sections, which, in the traveling  
17 mode, is eight body feet or more in width or forty body feet or  
18 more in length, or, when erected on site, is three hundred  
19 twenty or more square feet, and which is built on a permanent  
20 chassis and designed to be used as a dwelling with or without a  
21 permanent foundation when connected to the required utilities,  
22 and includes the plumbing, heating, air-conditioning and  
23 electrical systems contained therein. The term includes any  
24 structure that meets all of the requirements of this

25 [~~subsection~~] paragraph except the size requirements and with

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1 respect to which the manufacturer voluntarily files a  
2 certification required by the United States secretary of  
3 housing and urban development and complies with the standards  
4 established under 42 USCA;

5 (54) "manufactured-home transaction" means a  
6 secured transaction:

7 (A) that creates a purchase-money  
8 security interest in a manufactured home, other than a  
9 manufactured home held as inventory; or

10 (B) in which a manufactured home, other  
11 than a manufactured home held as inventory, is the primary  
12 collateral;

13 (55) "mortgage" means a consensual interest in  
14 real property, including fixtures, that secures payment or  
15 performance of an obligation;

16 (56) "new debtor" means a person that becomes  
17 bound as debtor under Subsection (d) of Section 55-9-203 NMSA  
18 1978 by a security agreement previously entered into by another  
19 person;

20 (57) "new value" means:

21 (A) money;

22 (B) money's worth in property, services  
23 or new credit; or

24 (C) release by a transferee of an  
25 interest in property previously transferred to the transferee.

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1 The term does not include an obligation substituted for another  
2 obligation;

3 (58) "noncash proceeds" means proceeds other  
4 than cash proceeds;

5 (59) "obligor" means a person that, with  
6 respect to an obligation secured by a security interest in or  
7 an agricultural lien on the collateral:

8 (A) owes payment or other performance of  
9 the obligation;

10 (B) has provided property other than the  
11 collateral to secure payment or other performance of the  
12 obligation; or

13 (C) is otherwise accountable in whole or  
14 in part for payment or other performance of the obligation.

15 The term does not include issuers or nominated persons under a  
16 letter of credit;

17 (60) "original debtor", except as used in  
18 Subsection (c) of Section 55-9-310 NMSA 1978, means a person  
19 that, as debtor, entered into a security agreement to which a  
20 new debtor has become bound under Subsection (d) of Section  
21 55-9-203 NMSA 1978;

22 (61) "payment intangible" means a general  
23 intangible under which the account debtor's principal  
24 obligation is a monetary obligation;

25 (62) "person related to", with respect to an

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1 individual, means:

2 (A) the spouse of the individual;

3 (B) a brother, brother-in-law, sister or  
4 sister-in-law of the individual;

5 (C) an ancestor or lineal descendant of  
6 the individual or the individual's spouse; or

7 (D) any other relative, by blood or  
8 marriage, of the individual or the individual's spouse who  
9 shares the same home with the individual;

10 (63) "person related to", with respect to an  
11 organization, means:

12 (A) a person directly or indirectly  
13 controlling, controlled by or under common control with the  
14 organization;

15 (B) an officer or director of, or a  
16 person performing similar functions with respect to, the  
17 organization;

18 (C) an officer or director of, or a  
19 person performing similar functions with respect to, a person  
20 described in Subparagraph (A) of this paragraph;

21 (D) the spouse of an individual  
22 described in Subparagraph (A), (B) or (C) of this paragraph; or

23 (E) an individual who is related by  
24 blood or marriage to an individual described in Subparagraph  
25 (A), (B), (C) or (D) of this paragraph and shares the same home

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1 with the individual;

2 (64) "proceeds", except as used in Subsection  
3 (b) of Section 55-9-609 NMSA 1978, means:

4 (A) whatever is acquired upon the sale,  
5 lease, license, exchange or other disposition of collateral;

6 (B) whatever is collected on, or  
7 distributed on account of, collateral;

8 (C) rights arising out of collateral;

9 (D) to the extent of the value of  
10 collateral, claims arising out of the loss, nonconformity or  
11 interference with the use of, defects or infringement of rights  
12 in, or damage to, the collateral; or

13 (E) to the extent of the value of  
14 collateral and to the extent payable to the debtor or the  
15 secured party, insurance payable by reason of the loss or  
16 nonconformity of, defects or infringement of rights in, or  
17 damage to, the collateral;

18 (65) "promissory note" means an instrument  
19 that evidences a promise to pay a monetary obligation, does not  
20 evidence an order to pay and does not contain an acknowledgment  
21 by a bank that the bank has received for deposit a sum of money  
22 or funds;

23 (66) "proposal" means a record authenticated  
24 by a secured party, which record includes the terms on which  
25 the secured party is willing to accept collateral in full or

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1 partial satisfaction of the obligation it secures pursuant to  
2 Sections 55-9-620 through 55-9-622 NMSA 1978;

3 (67) "public-finance transaction" means a  
4 secured transaction in connection with which:

5 (A) debt securities are issued;

6 (B) all or a portion of the securities  
7 issued have an initial stated maturity of at least twenty  
8 years; and

9 (C) the debtor, obligor, secured party,  
10 account debtor or other person obligated on collateral,  
11 assignor or assignee of a secured obligation, or assignor or  
12 assignee of a security interest is a state or a governmental  
13 unit of a state;

14 (68) "pursuant to commitment", with respect to  
15 an advance made or other value given by a secured party, means  
16 pursuant to the secured party's obligation, whether or not a  
17 subsequent event of default or other event not within the  
18 secured party's control has relieved or may relieve the secured  
19 party from its obligation;

20 (69) "record", except as used in "for record",  
21 "of record", "record or legal title" and "record owner", means  
22 information that is inscribed on a tangible medium or that is  
23 stored in an electronic or other medium and is retrievable in  
24 perceivable form;

25 (70) "registered organization" means an

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1 organization organized solely under the law of a single state  
2 or the United States and as to which the state or the United  
3 States must maintain a public record showing the organization  
4 to have been organized;

5 (71) "secondary obligor" means an obligor to  
6 the extent that:

7 (A) the obligor's obligation is  
8 secondary; or

9 (B) the obligor has a right of recourse  
10 with respect to an obligation secured by collateral against the  
11 debtor, another obligor or property of either;

12 (72) "secured party" means:

13 (A) a person in whose favor a security  
14 interest is created or provided for under a security agreement,  
15 whether or not any obligation to be secured is outstanding;

16 (B) a person that holds an agricultural  
17 lien;

18 (C) a consignor;

19 (D) a person to which accounts, chattel  
20 paper, payment intangibles or promissory notes have been sold;

21 (E) a trustee, indenture trustee, agent,  
22 collateral agent or other representative in whose favor a  
23 security interest or agricultural lien is created or provided  
24 for; or

25 (F) a person that holds a security

1 interest arising under Section 55-2-401, Section 55-2-505,  
2 Subsection (3) of Section 55-2-711, Subsection (5) of Section  
3 55-2A-508, Section 55-4-210 or Section 55-5-118 NMSA 1978;

4 (73) "security agreement" means an agreement  
5 that creates or provides for a security interest;

6 (74) "send", in connection with a record or  
7 notification, means:

8 (A) to deposit in the mail, deliver for  
9 transmission or transmit by any other usual means of  
10 communication, with postage or cost of transmission provided  
11 for, addressed to any address reasonable under the  
12 circumstances; or

13 (B) to cause the record or notification  
14 to be received within the time that it would have been received  
15 if properly sent under Subparagraph (A) of this paragraph;

16 (75) "software" means a computer program and  
17 any supporting information provided in connection with a  
18 transaction relating to the program. The term does not include  
19 a computer program that is included in the definition of goods;

20 (76) "state" means a state of the United  
21 States, the District of Columbia, Puerto Rico, the United  
22 States Virgin Islands or any territory or insular possession  
23 subject to the jurisdiction of the United States;

24 (77) "supporting obligation" means a  
25 letter-of-credit right or secondary obligation that supports

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1 the payment or performance of an account, chattel paper, a  
2 document, a general intangible, an instrument or investment  
3 property;

4 (78) "tangible chattel paper" means chattel  
5 paper evidenced by a record or records consisting of  
6 information that is inscribed on a tangible medium;

7 (79) "termination statement" means an  
8 amendment of a financing statement that:

9 (A) identifies, by its file number, the  
10 initial financing statement to which it relates; and

11 (B) indicates either that it is a  
12 termination statement or that the identified financing  
13 statement is no longer effective; and

14 (80) "transmitting utility" means a person  
15 primarily engaged in the business of:

16 (A) operating a railroad, subway, street  
17 railway or trolley bus;

18 (B) transmitting communications  
19 electrically, electromagnetically or by light;

20 (C) transmitting goods by pipeline or  
21 sewer; or

22 (D) transmitting or producing and  
23 transmitting electricity, steam, gas or water.

24 (b) "Control", as provided in Section 55-7-106 NMSA  
25 1978, and the following definitions in other articles apply to  
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1 this article:  
2 "applicant" . . . . . Section  
3 55-5-102 NMSA 1978;  
4 "beneficiary" . . . . . Section  
5 55-5-102 NMSA 1978;  
6 "broker" . . . . . Section  
7 55-8-102 NMSA 1978;  
8 "certificated security" . . . . . Section  
9 55-8-102 NMSA 1978;  
10 "check" . . . . . Section  
11 55-3-104 NMSA 1978;  
12 "clearing corporation" . . . . . Section  
13 55-8-102 NMSA 1978;  
14 "contract for sale" . . . . . Section  
15 55-2-106 NMSA 1978;  
16 "customer" . . . . . Section  
17 55-4-104 NMSA 1978;  
18 "entitlement holder" . . . . . Section  
19 55-8-102 NMSA 1978;  
20 "financial asset" . . . . . Section  
21 55-8-102 NMSA 1978;  
22 "holder in due course" . . . . . Section  
23 55-3-302 NMSA 1978;  
24 "issuer" (with respect to a letter of credit or  
25 letter-of-credit right) . . . . . Section

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1 55-5-102 NMSA 1978;  
2 "issuer" (with respect to a security) . . . Section  
3 55-8-201 NMSA 1978;  
4 "issuer" (with respect to documents  
5 of title) . . . . . Section  
6 55-7-102 NMSA 1978;  
7 "lease" . . . . . Section  
8 55-2A-103 NMSA 1978;  
9 "lease agreement" . . . . . Section  
10 55-2A-103 NMSA 1978;  
11 "lease contract" . . . . . Section  
12 55-2A-103 NMSA 1978;  
13 "leasehold interest" . . . . . Section  
14 55-2A-103 NMSA 1978;  
15 "lessee" . . . . . Section  
16 55-2A-103 NMSA 1978;  
17 "lessee in ordinary course of business" . . Section  
18 55-2A-103 NMSA 1978;  
19 "lessor" . . . . . Section  
20 55-2A-103 NMSA 1978;  
21 "lessor's residual interest" . . . . . Section  
22 55-2A-103 NMSA 1978;  
23 "letter of credit" . . . . . Section  
24 55-5-102 NMSA 1978;  
25 "merchant" . . . . . Section

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- 1 55-2-104 NMSA 1978;
- 2 "negotiable instrument" . . . . . Section
- 3 55-3-104 NMSA 1978;
- 4 "nominated person" . . . . . Section
- 5 55-5-102 NMSA 1978;
- 6 "note" . . . . . Section
- 7 55-3-104 NMSA 1978;
- 8 "proceeds of a letter of credit" . . . . . Section
- 9 55-5-114 NMSA 1978;
- 10 "prove" . . . . . Section
- 11 55-3-103 NMSA 1978;
- 12 "sale" . . . . . Section
- 13 55-2-106 NMSA 1978;
- 14 "securities account" . . . . . Section
- 15 55-8-501 NMSA 1978;
- 16 "securities intermediary" . . . . . Section
- 17 55-8-102 NMSA 1978;
- 18 "security" . . . . . Section
- 19 55-8-102 NMSA 1978;
- 20 "security certificate" . . . . . Section
- 21 55-8-102 NMSA 1978;
- 22 "security entitlement" . . . . . Section
- 23 55-8-102 NMSA 1978; and
- 24 "uncertificated security" . . . . . Section
- 25 55-8-102 NMSA 1978.

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1 (c) Chapter 12, Article 2A and Chapter 55, Article  
2 1 NMSA 1978 contain general definitions and principles of  
3 construction and interpretation applicable throughout Chapter  
4 55, Article 9 NMSA 1978."

5 Section 95. Section 55-9-203 NMSA 1978 (being Laws 2001,  
6 Chapter 139, Section 13) is amended to read:

7 "55-9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY  
8 INTEREST--PROCEEDS--SUPPORTING OBLIGATIONS--FORMAL  
9 REQUISITES.--

10 (a) A security interest attaches to collateral when  
11 it becomes enforceable against the debtor with respect to the  
12 collateral, unless an agreement expressly postpones the time of  
13 attachment.

14 (b) Except as otherwise provided in Subsections (c)  
15 through (i) of this section, a security interest is enforceable  
16 against the debtor and third parties with respect to the  
17 collateral only if:

18 (1) value has been given;

19 (2) the debtor has rights in the collateral or  
20 the power to transfer rights in the collateral to a secured  
21 party; and

22 (3) one of the following conditions is met:

23 (A) the debtor has authenticated a  
24 security agreement that provides a description of the  
25 collateral and, if the security interest covers timber to be

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1 cut, a description of the land concerned;

2 (B) the collateral is not a certificated  
3 security and is in the possession of the secured party under  
4 Section 55-9-313 NMSA 1978 pursuant to the debtor's security  
5 agreement;

6 (C) the collateral is a certificated  
7 security in registered form and the security certificate has  
8 been delivered to the secured party under Section 55-8-301 NMSA  
9 1978 pursuant to the debtor's security agreement; or

10 (D) the collateral is deposit accounts,  
11 electronic chattel paper, investment property, ~~[or]~~  
12 letter-of-credit rights or electronic documents, and the  
13 secured party has control under Section 55-7-106, 55-9-104,  
14 55-9-105, 55-9-106 or 55-9-107 NMSA 1978 pursuant to the  
15 debtor's security agreement.

16 (c) Subsection (b) of this section is subject to  
17 Section 55-4-210 NMSA 1978 on the security interest of a  
18 collecting bank, Section 55-5-118 NMSA 1978 on the security  
19 interest of a letter-of-credit issuer or nominated person,  
20 Section 55-9-110 NMSA 1978 on a security interest arising under  
21 Chapter 55, Article 2 or 2A NMSA 1978 and Section 55-9-206 NMSA  
22 1978 on security interests in investment property.

23 (d) A person becomes bound as debtor by a security  
24 agreement entered into by another person if, by operation of  
25 law other than Chapter 55, Article 9 NMSA 1978 or by contract:

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1 (1) the security agreement becomes effective  
2 to create a security interest in the person's property; or

3 (2) the person becomes generally obligated for  
4 the obligations of the other person, including the obligation  
5 secured under the security agreement, and acquires or succeeds  
6 to all or substantially all of the assets of the other person.

7 (e) If a new debtor becomes bound as debtor by a  
8 security agreement entered into by another person:

9 (1) the agreement satisfies Paragraph (3) of  
10 Subsection (b) of this section with respect to existing or  
11 after-acquired property of the new debtor to the extent the  
12 property is described in the agreement; and

13 (2) another agreement is not necessary to make  
14 a security interest in the property enforceable.

15 (f) The attachment of a security interest in  
16 collateral gives the secured party the rights to proceeds  
17 provided by Section 55-9-315 NMSA 1978 and is also attachment  
18 of a security interest in a supporting obligation for the  
19 collateral.

20 (g) The attachment of a security interest in a  
21 right to payment or performance secured by a security interest  
22 or other lien on personal or real property is also attachment  
23 of a security interest in the security interest, mortgage or  
24 other lien.

25 (h) The attachment of a security interest in a

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1 securities account is also attachment of a security interest in  
2 the security entitlements carried in the securities account.

3 (i) The attachment of a security interest in a  
4 commodity account is also attachment of a security interest in  
5 the commodity contracts carried in the commodity account."

6 Section 96. Section 55-9-207 NMSA 1978 (being Laws 2001,  
7 Chapter 139, Section 17) is amended to read:

8 "55-9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING  
9 POSSESSION OR CONTROL OF COLLATERAL.--

10 (a) Except as otherwise provided in Subsection (d)  
11 of this section, a secured party shall use reasonable care in  
12 the custody and preservation of collateral in the secured  
13 party's possession. In the case of chattel paper or an  
14 instrument, reasonable care includes taking necessary steps to  
15 preserve rights against prior parties unless otherwise agreed.

16 (b) Except as otherwise provided in Subsection (d)  
17 of this section, if a secured party has possession of  
18 collateral:

19 (1) reasonable expenses, including the cost of  
20 insurance and payment of taxes or other charges, incurred in  
21 the custody, preservation, use or operation of the collateral  
22 are chargeable to the debtor and are secured by the collateral;

23 (2) the risk of accidental loss or damage is  
24 on the debtor to the extent of a deficiency in any effective  
25 insurance coverage;

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1 (3) the secured party shall keep the  
2 collateral identifiable, but fungible collateral may be  
3 commingled; and

4 (4) the secured party may use or operate the  
5 collateral:

6 (A) for the purpose of preserving the  
7 collateral or its value;

8 (B) as permitted by an order of a court  
9 having competent jurisdiction; or

10 (C) except in the case of consumer  
11 goods, in the manner and to the extent agreed by the debtor.

12 (c) Except as otherwise provided in Subsection (d)  
13 of this section, a secured party having possession of  
14 collateral or control of collateral under Section 55-7-106,  
15 55-9-104, 55-9-105, 55-9-106 or 55-9-107 NMSA 1978:

16 (1) may hold as additional security any  
17 proceeds, except money or funds, received from the collateral;

18 (2) shall apply money or funds received from  
19 the collateral to reduce the secured obligation, unless  
20 remitted to the debtor; and

21 (3) may create a security interest in the  
22 collateral.

23 (d) If the secured party is a buyer of accounts,  
24 chattel paper, payment intangibles or promissory notes or is a  
25 consignor:

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1 (1) Subsection (a) of this section does not  
2 apply unless the secured party is entitled under an agreement:

3 (A) to charge back uncollected  
4 collateral; or

5 (B) otherwise to full or limited  
6 recourse against the debtor or a secondary obligor based on the  
7 nonpayment or other default of an account debtor or other  
8 obligor on the collateral; and

9 (2) Subsections (b) and (c) of this section do  
10 not apply."

11 Section 97. Section 55-9-208 NMSA 1978 (being Laws 2001,  
12 Chapter 139, Section 18) is amended to read:

13 "55-9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING  
14 CONTROL OF COLLATERAL.--

15 (a) This section applies to cases in which there is  
16 no outstanding secured obligation and the secured party is not  
17 committed to make advances, incur obligations or otherwise give  
18 value.

19 (b) Within ten days after receiving an  
20 authenticated demand by the debtor:

21 (1) a secured party having control of a  
22 deposit account under Paragraph (2) of Subsection (a) of  
23 Section 55-9-104 NMSA 1978 shall send to the bank with which  
24 the deposit account is maintained an authenticated statement  
25 that releases the bank from any further obligation to comply

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1 with instructions originated by the secured party;

2 (2) a secured party having control of a  
3 deposit account under Paragraph (3) of Subsection (a) of  
4 Section 55-9-104 NMSA 1978 shall:

5 (A) pay the debtor the balance on  
6 deposit in the deposit account; or

7 (B) transfer the balance on deposit into  
8 a deposit account in the debtor's name;

9 (3) a secured party, other than a buyer,  
10 having control of electronic chattel paper under Section  
11 55-9-105 NMSA 1978 shall:

12 (A) communicate the authoritative copy  
13 of the electronic chattel paper to the debtor or its designated  
14 custodian;

15 (B) if the debtor designates a custodian  
16 that is the designated custodian with which the authoritative  
17 copy of the electronic chattel paper is maintained for the  
18 secured party, communicate to the custodian an authenticated  
19 record releasing the designated custodian from any further  
20 obligation to comply with instructions originated by the  
21 secured party and instructing the custodian to comply with  
22 instructions originated by the debtor; and

23 (C) take appropriate action to enable  
24 the debtor or its designated custodian to make copies of or  
25 revisions to the authoritative copy [~~which~~] that add or change

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1 an identified assignee of the authoritative copy without the  
2 consent of the secured party;

3 (4) a secured party having control of  
4 investment property under Paragraph (2) of Subsection (d) of  
5 Section 55-8-106 NMSA 1978 or Subsection (b) of Section  
6 55-9-106 NMSA 1978 shall send to the securities intermediary or  
7 commodity intermediary with which the security entitlement or  
8 commodity contract is maintained an authenticated record that  
9 releases the securities intermediary or commodity intermediary  
10 from any further obligation to comply with entitlement orders  
11 or directions originated by the secured party; [~~and~~]

12 (5) a secured party having control of a  
13 letter-of-credit right under Section 55-9-107 NMSA 1978 shall  
14 send to each person having an unfulfilled obligation to pay or  
15 deliver proceeds of the letter of credit to the secured party  
16 an authenticated release from any further obligation to pay or  
17 deliver proceeds of the letter of credit to the secured party;  
18 and

19 (6) a secured party having control of an  
20 electronic document shall:

21 (A) give control of the electronic  
22 document to the debtor or its designated custodian;

23 (B) if the debtor designates a custodian  
24 that is the designated custodian with which the authoritative  
25 copy of the electronic document is maintained for the secured

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1 party, communicate to the custodian an authenticated record  
2 releasing the designated custodian from any further obligation  
3 to comply with instructions originated by the secured party and  
4 instructing the custodian to comply with instructions  
5 originated by the debtor; and

6 (C) take appropriate action to enable  
7 the debtor or its designated custodian to make copies of or  
8 revisions to the authoritative copy which add or change an  
9 identified assignee of the authoritative copy without the  
10 consent of the secured party."

11 Section 98. Section 55-9-301 NMSA 1978 (being Laws 2001,  
12 Chapter 139, Section 21) is amended to read:

13 "55-9-301. LAW GOVERNING PERFECTION AND PRIORITY OF  
14 SECURITY INTERESTS.--Except as otherwise provided in Sections  
15 55-9-303 through 55-9-306 NMSA 1978, the following rules  
16 determine the law governing perfection, the effect of  
17 perfection or nonperfection and the priority of a security  
18 interest in collateral:

19 (1) except as otherwise provided in this section,  
20 while a debtor is located in a jurisdiction, the local law of  
21 that jurisdiction governs perfection, the effect of perfection  
22 or nonperfection and the priority of a security interest in  
23 collateral;

24 (2) while collateral is located in a jurisdiction,  
25 the local law of that jurisdiction governs perfection, the

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1 effect of perfection or nonperfection and the priority of a  
2 possessory security interest in that collateral;

3 (3) except as otherwise provided in Subsection (4)  
4 of this section, while tangible negotiable documents, goods,  
5 instruments, money or tangible chattel paper is located in a  
6 jurisdiction, the local law of that jurisdiction governs:

7 (A) perfection of a security interest in the  
8 goods by filing a fixture filing;

9 (B) perfection of a security interest in  
10 timber to be cut; and

11 (C) the effect of perfection or nonperfection  
12 and the priority of a nonpossessory security interest in the  
13 collateral; and

14 (4) the local law of the jurisdiction in which the  
15 wellhead or minehead is located governs perfection, the effect  
16 of perfection or nonperfection and the priority of a security  
17 interest in as-extracted collateral."

18 Section 99. Section 55-9-304 NMSA 1978 (being Laws 2001,  
19 Chapter 139, Section 24) is amended to read:

20 "55-9-304. LAW GOVERNING PERFECTION AND PRIORITY OF  
21 SECURITY INTERESTS IN DEPOSIT ACCOUNTS.--

22 (a) The local law of a bank's jurisdiction governs  
23 perfection, the effect of perfection or nonperfection and the  
24 priority of a security interest in a deposit account maintained  
25 with that bank.

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1 (b) The following rules determine a bank's  
2 jurisdiction for purposes of Sections 55-9-301 through 55-9-342  
3 NMSA 1978:

4 (1) if an agreement between the bank and [~~the~~  
5 ~~debtor~~] its customer governing the deposit account expressly  
6 provides that a particular jurisdiction is the bank's  
7 jurisdiction for purposes of the Uniform Commercial Code, that  
8 jurisdiction is the bank's jurisdiction;

9 (2) if Paragraph (1) of this subsection does  
10 not apply and an agreement between the bank and its customer  
11 governing the deposit account expressly provides that the  
12 agreement is governed by the law of a particular jurisdiction,  
13 that jurisdiction is the bank's jurisdiction;

14 (3) if neither Paragraph (1) nor Paragraph (2)  
15 of this subsection applies and an agreement between the bank  
16 and its customer governing the deposit account expressly  
17 provides that the deposit account is maintained at an office in  
18 a particular jurisdiction, that jurisdiction is the bank's  
19 jurisdiction;

20 (4) if none of the preceding paragraphs  
21 applies, the bank's jurisdiction is the jurisdiction in which  
22 the office identified in an account statement as the office  
23 serving the customer's account is located; and

24 (5) if none of the preceding paragraphs  
25 applies, the bank's jurisdiction is the jurisdiction in which

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1 the chief executive office of the bank is located."

2 Section 100. Section 55-9-309 NMSA 1978 (being Laws 2001,  
3 Chapter 139, Section 29) is amended to read:

4 "55-9-309. SECURITY INTEREST PERFECTED UPON ATTACHMENT.--

5 The following security interests are perfected when they  
6 attach:

7 (1) a purchase-money security interest in consumer  
8 goods, except as otherwise provided in Subsection (b) of  
9 Section 55-9-311 NMSA 1978 with respect to consumer goods that  
10 are subject to a statute or treaty described in Subsection (a)  
11 of Section 55-9-311 NMSA 1978;

12 (2) an assignment of accounts or payment  
13 intangibles which does not by itself or in conjunction with  
14 other assignments to the same assignee transfer a significant  
15 part of the assignor's outstanding accounts or payment  
16 intangibles;

17 (3) a sale of a payment intangible;

18 (4) a sale of a promissory note;

19 (5) a security interest created by the assignment  
20 of a health-care-insurance receivable to the provider of the  
21 health care goods or services;

22 (6) a security interest arising under Section  
23 55-2-401, 55-2-505, Subsection (3) of Section 55-2-711 or  
24 Subsection (5) of Section 55-2A-508 NMSA 1978, until the debtor  
25 obtains possession of the collateral;

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1 (7) a security interest of a collecting bank  
2 arising under Section 55-4-210 NMSA 1978;

3 (8) a security interest of an issuer or nominated  
4 person arising under Section 55-5-118 NMSA 1978;

5 (9) a security interest arising in the delivery of  
6 a financial asset under Subsection (c) of Section 55-9-206 NMSA  
7 1978;

8 (10) a security interest in investment property  
9 created by a broker or securities intermediary;

10 (11) a security interest in a commodity contract or  
11 a commodity account created by a commodity intermediary;

12 (12) an assignment for the benefit of all creditors  
13 of the transferor and subsequent transfers by the assignee  
14 thereunder; [~~and~~]

15 (13) a security interest created by an assignment  
16 of a beneficial interest in a decedent's estate; and

17 (14) a sale by an individual of an account that is  
18 a right to payment of winnings in a lottery or other game of  
19 chance."

20 Section 101. Section 55-9-310 NMSA 1978 (being Laws 2001,  
21 Chapter 139, Section 30) is amended to read:

22 "55-9-310. WHEN FILING REQUIRED TO PERFECT SECURITY  
23 INTEREST OR AGRICULTURAL LIEN--SECURITY INTERESTS AND  
24 AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.--

25 (a) Except as otherwise provided in Subsection (b)

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1 of this section and in Section 55-9-312 NMSA 1978, a financing  
2 statement must be filed to perfect all security interests and  
3 agricultural liens.

4 (b) The filing of a financing statement is not  
5 necessary to perfect a security interest:

6 (1) that is perfected under Subsection (d),  
7 (e), (f) or (g) of Section 55-9-308 NMSA 1978;

8 (2) that is perfected under Section 55-9-309  
9 NMSA 1978 when it attaches;

10 (3) in property subject to a statute,  
11 regulation or treaty described in Subsection (a) of Section  
12 55-9-311 NMSA 1978;

13 (4) in goods in possession of a bailee [~~which~~]  
14 that is perfected under Paragraph (1) or (2) of Subsection (d)  
15 of Section 55-9-312 NMSA 1978;

16 (5) in certificated securities, documents,  
17 goods or instruments [~~which~~] that is perfected without filing,  
18 control or possession under Subsection (e), (f) or (g) of  
19 Section 55-9-312 NMSA 1978;

20 (6) in collateral in the secured party's  
21 possession under Section 55-9-313 NMSA 1978;

22 (7) in a certificated security [~~which~~] that is  
23 perfected by delivery of the security certificate to the  
24 secured party under Section 55-9-313 NMSA 1978;

25 (8) in deposit accounts, electronic chattel

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1 paper, electronic documents, investment property or letter-of-  
2 credit rights [~~which~~] that is perfected by control under  
3 Section 55-9-314 NMSA 1978;

4 (9) in proceeds that is perfected under  
5 Section 55-9-315 NMSA 1978; or

6 (10) that is perfected under Section 55-9-316  
7 NMSA 1978.

8 (c) If a secured party assigns a perfected security  
9 interest or agricultural lien, a filing under Chapter 55,  
10 Article 9 NMSA 1978 is not required to continue the perfected  
11 status of the security interest against creditors of and  
12 transferees from the original debtor."

13 Section 102. Section 55-9-312 NMSA 1978 (being Laws 2001,  
14 Chapter 139, Section 32) is amended to read:

15 "55-9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL  
16 PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS,  
17 INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS AND  
18 MONEY--PERFECTION BY PERMISSIVE FILING--TEMPORARY PERFECTION  
19 WITHOUT FILING OR TRANSFER OF POSSESSION.--

20 (a) A security interest in chattel paper,  
21 negotiable documents, instruments or investment property may be  
22 perfected by filing.

23 (b) Except as otherwise provided in Subsections (c)  
24 and (d) of Section 55-9-315 NMSA 1978 for proceeds:

25 (1) a security interest in a deposit account

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1 may be perfected only by control under Section 55-9-314 NMSA  
2 1978;

3 (2) and except as otherwise provided in  
4 Subsection (d) of Section 55-9-308 NMSA 1978, a security  
5 interest in a letter-of-credit right may be perfected only by  
6 control under Section 55-9-314 NMSA 1978; and

7 (3) a security interest in money may be  
8 perfected only by the secured party's taking possession under  
9 Section 55-9-313 NMSA 1978.

10 (c) While goods are in the possession of a bailee  
11 that has issued a negotiable document covering the goods:

12 (1) a security interest in the goods may be  
13 perfected by perfecting a security interest in the document;  
14 and

15 (2) a security interest perfected in the  
16 document has priority over any security interest that becomes  
17 perfected in the goods by another method during that time.

18 (d) While goods are in the possession of a bailee  
19 that has issued a nonnegotiable document covering the goods, a  
20 security interest in the goods may be perfected by:

21 (1) issuance of a document in the name of the  
22 secured party;

23 (2) the bailee's receipt of notification of  
24 the secured party's interest; or

25 (3) filing as to the goods.

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1 (e) A security interest in certificated securities,  
2 negotiable documents or instruments is perfected without filing  
3 or the taking of possession or control for a period of twenty  
4 days from the time it attaches to the extent that it arises for  
5 new value given under an authenticated security agreement.

6 (f) A perfected security interest in a negotiable  
7 document or goods in possession of a bailee, other than one  
8 that has issued a negotiable document for the goods, remains  
9 perfected for twenty days without filing if the secured party  
10 makes available to the debtor the goods or documents  
11 representing the goods for the purpose of:

12 (1) ultimate sale or exchange; or

13 (2) loading, unloading, storing, shipping,  
14 transshipping, manufacturing, processing or otherwise dealing  
15 with them in a manner preliminary to their sale or exchange.

16 (g) A perfected security interest in a certificated  
17 security or instrument remains perfected for twenty days  
18 without filing if the secured party delivers the security  
19 certificate or instrument to the debtor for the purpose of:

20 (1) ultimate sale or exchange; or

21 (2) presentation, collection, enforcement,  
22 renewal or registration of transfer.

23 (h) After the twenty-day period specified in  
24 Subsection (e), (f) or (g) of this section expires, perfection  
25 depends upon compliance with Chapter 55, Article 9 NMSA 1978."

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1           Section 103. Section 55-9-313 NMSA 1978 (being Laws 2001,  
2 Chapter 139, Section 33) is amended to read:

3           "55-9-313. WHEN POSSESSION BY OR DELIVERY TO SECURED  
4 PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.--

5           (a) Except as otherwise provided in Subsection (b)  
6 of this section, a secured party may perfect a security  
7 interest in tangible negotiable documents, goods, instruments,  
8 money or tangible chattel paper by taking possession of the  
9 collateral. A secured party may perfect a security interest in  
10 certificated securities by taking delivery of the certificated  
11 securities under Section 55-8-301 NMSA 1978.

12           (b) With respect to goods covered by a certificate  
13 of title issued by this state, a secured party may perfect a  
14 security interest in the goods by taking possession of the  
15 goods only in the circumstances described in Subsection (d) of  
16 Section 55-9-316 NMSA 1978.

17           (c) With respect to collateral other than  
18 certificated securities and goods covered by a document, a  
19 secured party takes possession of collateral in the possession  
20 of a person other than the debtor, the secured party or a  
21 lessee of the collateral from the debtor in the ordinary course  
22 of the debtor's business when:

23                   (1) the person in possession authenticates a  
24 record acknowledging that it holds possession of the collateral  
25 for the secured party's benefit; or

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1 (2) the person takes possession of the  
2 collateral after having authenticated a record acknowledging  
3 that it will hold possession of collateral for the secured  
4 party's benefit.

5 (d) If perfection of a security interest depends  
6 upon possession of the collateral by a secured party,  
7 perfection occurs no earlier than the time the secured party  
8 takes possession and continues only while the secured party  
9 retains possession.

10 (e) A security interest in a certificated security  
11 in registered form is perfected by delivery when delivery of  
12 the certificated security occurs under Section 55-8-301 NMSA  
13 1978 and remains perfected by delivery until the debtor obtains  
14 possession of the security certificate.

15 (f) A person in possession of collateral is not  
16 required to acknowledge that it holds possession for a secured  
17 party's benefit.

18 (g) If a person acknowledges that it holds  
19 possession for the secured party's benefit:

20 (1) the acknowledgment is effective under  
21 Subsection (c) of this section or Subsection (a) of Section  
22 55-8-301 NMSA 1978, even if the acknowledgment violates the  
23 rights of a debtor; and

24 (2) unless the person otherwise agrees or law  
25 other than Chapter 55, Article 9 NMSA 1978 otherwise provides,

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1 the person does not owe any duty to the secured party and is  
2 not required to confirm the acknowledgment to another person.

3 (h) A secured party having possession of collateral  
4 does not relinquish possession by delivering the collateral to  
5 a person other than the debtor or a lessee of the collateral  
6 from the debtor in the ordinary course of the debtor's business  
7 if the person was instructed before the delivery or is  
8 instructed contemporaneously with the delivery:

9 (1) to hold possession of the collateral for  
10 the secured party's benefit; or

11 (2) to redeliver the collateral to the secured  
12 party.

13 (i) A secured party does not relinquish possession,  
14 even if a delivery under Subsection (h) of this section  
15 violates the rights of a debtor. A person to which collateral  
16 is delivered under Subsection (h) of this section does not owe  
17 any duty to the secured party and is not required to confirm  
18 the delivery to another person unless the person otherwise  
19 agrees or law other than [~~this article~~] Chapter 55, Article 9  
20 NMSA 1978 otherwise provides."

21 Section 104. Section 55-9-314 NMSA 1978 (being Laws 2001,  
22 Chapter 139, Section 34) is amended to read:

23 "55-9-314. PERFECTION BY CONTROL.--

24 (a) A security interest in investment property,  
25 deposit accounts, letter-of-credit rights, [~~or~~] electronic

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1 chattel paper or electronic documents may be perfected by  
2 control of the collateral under Section 55-7-106, 55-9-104,  
3 55-9-105, 55-9-106 or 55-9-107 NMSA 1978.

4 (b) A security interest in deposit accounts,  
5 electronic chattel paper, ~~[or]~~ letter-of-credit rights or  
6 electronic documents is perfected by control under Section  
7 55-7-106, 55-9-104, 55-9-105 or 55-9-107 NMSA 1978 when the  
8 secured party obtains control and remains perfected by control  
9 only while the secured party retains control.

10 (c) A security interest in investment property is  
11 perfected by control under Section 55-9-106 NMSA 1978 from the  
12 time the secured party obtains control and remains perfected by  
13 control until:

14 (1) the secured party does not have control;  
15 and

16 (2) one of the following occurs:

17 (A) if the collateral is a certificated  
18 security, the debtor has or acquires possession of the security  
19 certificate;

20 (B) if the collateral is an  
21 uncertificated security, the issuer has registered or registers  
22 the debtor as the registered owner; or

23 (C) if the collateral is a security  
24 entitlement, the debtor is or becomes the entitlement holder."

25 Section 105. Section 55-9-317 NMSA 1978 (being Laws 2001,

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1 Chapter 139, Section 37) is amended to read:

2 "55-9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE  
3 OF SECURITY INTEREST OR AGRICULTURAL LIEN.--

4 (a) A security interest or agricultural lien is  
5 subordinate to the rights of:

6 (1) a person entitled to priority under  
7 Section 55-9-322 NMSA 1978; and

8 (2) except as otherwise provided in Subsection  
9 (e) of this section, a person that becomes a lien creditor  
10 before the earlier of the time:

11 (A) the security interest or  
12 agricultural lien is perfected; or

13 (B) one of the conditions specified in  
14 Paragraph (3) of Subsection (b) of Section 55-9-203 NMSA 1978  
15 is met and a financing statement covering the collateral is  
16 filed.

17 (b) Except as otherwise provided in Subsection (e)  
18 of this section, a buyer, other than a secured party, of  
19 tangible chattel paper, tangible documents, goods, instruments  
20 or a security certificate takes free of a security interest or  
21 agricultural lien if the buyer gives value and receives  
22 delivery of the collateral without knowledge of the security  
23 interest or agricultural lien and before it is perfected.

24 (c) Except as otherwise provided in Subsection (e)  
25 of this section, a lessee of goods takes free of a security

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1 interest or agricultural lien if the lessee gives value and  
2 receives delivery of the collateral without knowledge of the  
3 security interest or agricultural lien and before it is  
4 perfected.

5 (d) A licensee of a general intangible or a buyer,  
6 other than a secured party, of accounts, electronic chattel  
7 paper, electronic documents, general intangibles or investment  
8 property other than a certificated security takes free of a  
9 security interest if the licensee or buyer gives value without  
10 knowledge of the security interest and before it is perfected.

11 (e) Except as otherwise provided in Sections  
12 55-9-320 and 55-9-321 NMSA 1978, if a person files a financing  
13 statement with respect to a purchase-money security interest  
14 before or within twenty days after the debtor receives delivery  
15 of the collateral, the security interest takes priority over  
16 the rights of a buyer, lessee or lien creditor [~~which~~] that  
17 arise between the time the security interest attaches and the  
18 time of filing."

19 Section 106. Section 55-9-338 NMSA 1978 (being Laws 2001,  
20 Chapter 139, Section 58) is amended to read:

21 "55-9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL  
22 LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN  
23 INCORRECT INFORMATION.--If a security interest or agricultural  
24 lien is perfected by a filed financing statement providing  
25 information described in Paragraph (5) of Subsection (b) of

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1 Section 55-9-516 NMSA 1978 [~~which~~] that is incorrect at the  
2 time the financing statement is filed:

3 (1) the security interest or agricultural lien is  
4 subordinate to a conflicting perfected security interest in the  
5 collateral to the extent that the holder of the conflicting  
6 security interest gives value in reasonable reliance upon the  
7 incorrect information; and

8 (2) a purchaser, other than a secured party, of the  
9 collateral takes free of the security interest or agricultural  
10 lien to the extent that, in reasonable reliance upon the  
11 incorrect information, the purchaser gives value and, in the  
12 case of tangible chattel paper, tangible documents, goods,  
13 instruments or a security certificate, receives delivery of the  
14 collateral."

15 Section 107. Section 55-9-601 NMSA 1978 (being Laws 2001,  
16 Chapter 139, Section 98) is amended to read:

17 "55-9-601. RIGHTS AFTER DEFAULT--JUDICIAL ENFORCEMENT--  
18 CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT  
19 INTANGIBLES OR PROMISSORY NOTES.--

20 (a) After default, a secured party has the rights  
21 provided in Sections 55-9-601 through 55-9-628 NMSA 1978 and,  
22 except as otherwise provided in Section 55-9-602 NMSA 1978,  
23 those provided by agreement of the parties. A secured party:

24 (1) may reduce a claim to judgment, foreclose  
25 or otherwise enforce the claim, security interest or

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1 agricultural lien by any available judicial procedure; and

2 (2) if the collateral is documents, may  
3 proceed either as to the documents or as to the goods they  
4 cover.

5 (b) A secured party in possession of collateral or  
6 control of collateral under Section 55-7-106, 55-9-104,  
7 55-9-105, 55-9-106 or 55-9-107 NMSA 1978 has the rights and  
8 duties provided in Section 55-9-207 NMSA 1978.

9 (c) The rights under Subsections (a) and (b) of  
10 this section are cumulative and may be exercised  
11 simultaneously.

12 (d) Except as otherwise provided in Subsection (g)  
13 of this section and Section 55-9-605 NMSA 1978, after default,  
14 a debtor and an obligor have the rights provided in Sections  
15 55-9-601 through 55-9-628 NMSA 1978 and by agreement of the  
16 parties.

17 (e) If a secured party has reduced its claim to  
18 judgment, the lien of any levy that may be made upon the  
19 collateral by virtue of an execution based upon the judgment  
20 relates back to the earliest of:

21 (1) the date of perfection of the security  
22 interest or agricultural lien in the collateral;

23 (2) the date of filing a financing statement  
24 covering the collateral; or

25 (3) any date specified in a statute under

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1 which the agricultural lien was created.

2 (f) A sale pursuant to an execution is a  
3 foreclosure of the security interest or agricultural lien by  
4 judicial procedure within the meaning of this section. A  
5 secured party may purchase at the sale and thereafter hold the  
6 collateral free of any other requirements of Chapter 55,  
7 Article 9 NMSA 1978.

8 (g) Except as otherwise provided in Subsection (c)  
9 of Section 55-9-607 NMSA 1978, this part imposes no duties upon  
10 a secured party that is a consignor or is a buyer of accounts,  
11 chattel paper, payment intangibles or promissory notes."

12 Section 108. TEMPORARY PROVISION--EFFECTIVENESS.--This  
13 act applies to a document of title that is issued or a bailment  
14 that arises on or after the effective date of this act. This  
15 act does not apply to a document of title that is issued or a  
16 bailment that arises before the effective date of this act even  
17 if the document of title or bailment would be subject to this  
18 act if the document of title had been issued or bailment had  
19 arisen on or after the effective date of this act. This act  
20 does not apply to a right of action regarding a document of  
21 title or bailment that has accrued before the effective date of  
22 this act.

23 Section 109. TEMPORARY PROVISION--EFFECTIVENESS.--A  
24 document of title issued or a bailment that arises before the  
25 effective date of this act and the rights, obligations and

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1 interests flowing from that document or bailment are governed  
2 by any statute or other rule amended or repealed by this act as  
3 if amendment or repeal had not occurred and may be terminated,  
4 completed, consummated or enforced under that statute or other  
5 rule.

6 Section 110. TEMPORARY PROVISION--EFFECTIVENESS.--

7 Paragraphs 5 and 46 of Subsection A of Section 55-9-102 and  
8 Section 55-9-304 NMSA 1978 as amended by Sections 94 and 99 of  
9 this act shall be construed as declaring the law as it existed  
10 prior to the enactment of this act and not as modifying it.

11 Section 111. REPEAL.--Sections 55-1-109, 55-1-207,

12 55-1-208, 55-1-209, 55-2-208, 55-2A-207, 55-7-701 through  
13 55-7-706 and 55-7-801 through 55-7-807 NMSA 1978 (being Laws  
14 1961, Chapter 96, Sections 1-109, 1-207 and 1-208, Laws 1992,  
15 Chapter 114, Section 5, Laws 1961, Chapter 96, Section 2-208,  
16 Laws 1992, Chapter 114, Section 23 and Laws 1961, Chapter 96,  
17 Sections 7-701 through 7-706 and Sections 7-801 through 7-807,  
18 as amended) are repealed.

19 Section 112. APPLICABILITY.--Section 100 of this act

20 applies to a sale of an account described in Subsection (14) of  
21 Section 55-9-309 NMSA 1978 even if the sale was entered into  
22 before that subsection took effect. However, if the relative  
23 priorities of conflicting claims to the account were  
24 established before that subsection took effect, Chapter 55,  
25 Article 9 NMSA 1978 as in effect immediately prior to the date

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1 that subsection took effect determines priority.

2 Section 113. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is January 1, 2006.

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